United States Court of Appeals

for the Second Circuit

APPENDIX

75-7450

ORIGINAL

In The

United States Court of Appeals

For The Second Circuit

DAILY MIRROR, INC.,

Plaintiff-Appellant,

vs.

UNITED STATES COURT OF APPEALS
FILED
NOV 10 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

NEW YORK NEWS, INC., HARRY (HENRY) GARFINKLE, UNION NEWS CO., INC., AMERICAN NEWS CO., INC., and ANCORP, INC.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of New York

JOINT APPENDIX

Volume II, pp. JA246 – End

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(Judicial Notice to be taken herin)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

ANCORP NATIONAL SERVICES, INC.,

Defendant.

- -x

#40073

70 Civ. 5770

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
NOV 30 12 50 PM '73

Appearances:

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Of Counsel

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Attorneys for Defendant
EUGENE FREDERICK ROTH
GEORGE HALPERN
Of Counsel

MICROFILM
DEC 3 1973

O P I N I O N

BONSAL, D. J.

This is a suit by the United States to collect civil penalties in the amount of $585,000 from the defendant Ancorp National Services, Inc. ("Ancorp") for allegedly violating a final

Cease and Desist Order of the Federal Trade Commission ("FTC") issued on April 13, 1964 ("the FTC Order"). The United States also seeks a permanent injunction. Jurisdiction is alleged under 15 U.S.C. §§ 45(l) and 56, and 28 U.S.C. §§ 1337, 1345, and 1355.

On February 5, 1959, the Federal Trade Commission filed an administrative complaint, charging respondents American News Company (now Ancorp) and Union News Company (now a subdivision of Ancorp) with unfair competitive practices. The complaint charged the respondents with having violated section 5 of the Federal Trade Commission Act by inducing and coercing suppliers to make payments or to grant allowances as compensation for services or facilities furnished in connection with the sale of such suppliers' products on respondents' newsstands when respondents knew or should have known that such payments were not being offered or made available on proportionally equal terms to all customers of such suppliers who were in competition with the respondents. On January 10, 1961, after an administrative hearing, the FTC issued a Cease and Desist Order. On February 7, 1962, the Court of Appeals for the Second Circuit modified the FTC Order and affirmed it as modified. American News Co. v. FTC, 300 F.2d 104 (2d Cir. 1962). On October 8, 1962, the Supreme Court denied respondent's petition for a writ of certiorari. 371 U.S. 824 (1962). The FTC Order of April 13, 1964 became final on May 13, 1964, 15 U.S.C. §45(i), and

has been in effect at all times relevant to this action.

The FTC Order as modified provided:

> "IT IS ORDERED that the respondents, The American News Company and The Union News Company, corporations, their officers, employees, agents or representatives, directly or through any corporate or other device, in or in connection with the purchase in commerce, as 'commerce' is defined in the Federal Trade Commission Act, of products for resale on newsstands operated by respondents, do forthwith cease and desist from:
>
> Receiving, or inducing and receiving, or contracting for the receipt of, anything of value from any of their suppliers as compensation or in consideration for display or promotional services or facilities furnished by or through respondents in connection with the processing, handling, sale, or offering for sale of products purchased from any of their suppliers, when respondents know or should know that such compensation or consideration is not affirmatively offered or otherwise made available by such suppliers on proportionally equal terms to all their other customers competing with respondents in the sale and distribution of such suppliers' products."

This action was instituted on December 31, 1970.[1/] The complaint alleges that the defendant received "compensation" in varying amounts from three newspapers in New York City (The New York Times, The Daily News, and The Post) in connection with promoting and displaying these newspapers on its newsstands; that the defendant knew or should have known that such compensation was not offered or otherwise made available by the three newspapers on proportionally equal terms to all of their newsstand customers; and that by receiving such compensation, the

defendant violated the FTC Order quoted above. The complaint comprises three counts: count 1 relates to The New York Times; count 2, to The Daily News; and count 3, to The Post.

The complaint alleges that these payments began at "some time prior to December 1965" and continued to shortly before the filing of the complaint. Payments allegedly received prior to December 31, 1965, however, are barred by the five-year statute of limitations which applies to civil penalty actions. 28 U.S.C. §2462.

On the basis of the testimony of Mr. Ivan Veit, Executive Vice President, and Mr. Thomas McVeigh, Corporate Controller of the Times, and the exhibits received during the trial, the Court finds that each month from January, 1961 to July, 1969 the Union News Company billed the Times for "Rental of Space in Newsstands for New York Times Advertising Signs" and that the Times paid these bills. The payments from January, 1961 to August, 1963 were in the amount of $2,000 per month; they were increased in August, 1963 to $2,587.20 per month ($4.90 per stand for 528 stands).

On the basis of the testimony of Mr. William Carey, Circulation Manager, and Mr. Jack Underwood, Vice President and Director of Sales of The Daily News, and the exhibits received during the trial, the Court finds that each week from June 1, 1964

to March 3, 1969, except for periods--prior to 1966--when the Daily News was not published as a result of a strike, the Union News Company billed the Daily News for "Advertising Service" and that the Daily News paid these bills. The payments were in the amount of $500 per week.

On the basis of the testimony of Mr. Byron Greenberg, Circulation Director of the Post, and the exhibits received during the trial, the Court finds that from July, 1964 to June, 1969 the Union News Company billed the Post for "Advertising Service" and that the Post paid these bills. The payments were in the amount of $50 per month.

On the issue of the defendant's knowledge and intent, the Court received evidence as to payments made by other New York City newspapers to the Union News Company. On the basis of the deposition of Mr. Roy I. Newborn, who was Circulation Director of the now defunct New York Herald Tribune from 1961 to 1964, the Court finds that the Herald Tribune paid fees for advertising services on a monthly basis totalling $12,000 to $15,000 a year. That arrangement lasted until the Herald Tribune ceased publication on April 24, 1966. On the basis of the testimony of Mr. John Potulny, Manager of the field operations group of Dow Jones and Company (which publishes the Wall Street Journal), the Court finds that from the fall of 1965 to January, 1968, the Wall Street

from the New York Times (from January 1, 1966 to July 1, 1969)	42
from the Daily News (from January 1, 1966 to March 3, 1969) [4]	38
from the Post (from January 1, 1966 to July 1, 1969)	42
Total number of violations of the Order	122 [5]

Penalties

The United States is seeking to recover the maximum penalty of $5,000 for each violation of the Order (15 U.S.C. §45(ℓ)).

In assessing the amount of penalties to be imposed for each violation, the relevant factors are: the wilfullness of the violations, the total amounts of the payments received by the defendant in violation of the FTC Order, the harm to the public from the violations, and the financial capacity of the defendant to pay whatever penalties are imposed. See United States v. J.B. Williams Co., 354 F.Supp. 521, 548 (S.D.N.Y. 1973); United States v. Beatrice Foods Co., 351 F.Supp. 969 (D. Minn. 1972); United States v. Vitasafe Corp., 234 F.Supp. 710 (S.D.N.Y. 1964), aff'd, 352 F.2d 62 (2d Cir. 1965); United States v. American Greetings Corp., 168 F.Supp. 45 (N.D. Ohio 1958), aff'd, 272 F.2d 945 (6th Cir. 1959).

The evidence at trial indicates that Mr. Henry Garfinkle, President of the Union News Company in 1963, sent a memorandum dated March 8, 1963 to the other officers and executives of Union News informing them of the FTC Order and instructing them to familiarize themselves with it and to report promptly any information that might indicate a potential violation. There was no evidence, however, of any other action taken by any officer of Union News to assure compliance with the FTC Order. The payments for advertising services, which the evidence indicates that Mr. Garfinkle helped to negotiate with the three newspapers, continued without change from 1961 to 1969, when they were unilaterally cancelled by the newspapers. There was no evidence that Union News ever attempted to inform any of the newspapers from which it was receiving payments of the terms of the FTC Order or to inquire whether proportionally equal terms were offered by them to competitors of Union News. Rather, the evidence indicates that, with the exception of Mr. Garfinkle's memorandum, Union News ignored the FTC Order. 6/

With respect to the total payments received, the evidence shows that during the period from January 1, 1966 to the termination of the arrangements with the three newspapers in 1969, Union News received payments in violation of the FTC Order totalling $108,662.40 from the Times, $82,000.00 from the Daily

News, and $2,100.00 from the Post; combined, these payments total $192,762.40. 7/

There is no evidence that the payments had any effect on the amount of Union newsstands' business nor on the price of newspapers sold to the public. The testimony indicates that Union newsstands sell newspapers within the City of New York at the cover price, as do their competitors. The competition that does exist among newsstands is primarily on the basis of their location and the number of items they carry. Since the evidence is speculative and inconclusive, the Court finds that harm to the public has not been demonstrated.

Ancorp is a conglomerate owning restaurants, snack bars, cafeterias, vending machines, catering facilities, drug stores, tobacco shops, and general merchandise marts as well as newsstands. It also engages in the wholesaling of books, matches, tobacco products, candy, stationery, art supplies, office furniture and equipment, and background music systems. For 1968, its net income was $2,784,054; for 1969, $2,305,026; for 1970, $1,275,847; and for 1971, $83,506. The unaudited Consolidated Statement of Operations and Retained Earnings for the year ending December 29, 1972 shows an operating loss for the year in the amount of ($13,672,953). The unaudited Consolidated Balance Sheet shows current liabilities of $51,943,210 against current assets of $27,682,578 and an earned

deficit of -$4,576,648. On March 20, 1973, Chapter XI proceedings were instituted by Ancorp, seeking an arrangement with its creditors, which proceedings are presently pending in New York City.

On the basis of the factors discussed above, the Court imposes the following penalties on the defendant for the violations of the FTC Order found above:

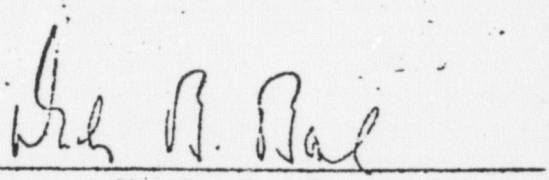
on count 1:	$2,500 for each of 42 violations	$105,000.
on count 2:	$2,500 for each of 38 violations	95,000.
on count 3:	$100 for each of 42 violations	4,200.
Total penalties		$204,200.

The United States is entitled to a judgment against the defendant in the amount of $204,200, and costs. In addition, a permanent injunction will be issued enjoining defendant Ancorp from further violations of the FTC Order.

The foregoing constitutes the Court's findings of fact and conclusions of law. F.R.Civ.P. 52(a).

Settle judgment on notice.

Dated: New York, N. Y.
November 30, 1973.



.U. S. D. J.

(Footnotes follow)

Footnotes:

1/ There is no dispute that before initiation of this suit the facts which gave rise to it were properly certified by the FTC to the Attorney General of the United States as required by section 16 of the Federal Trade Commission Act, 15 U.S.C. §56.

2/ Defendant contends that since its stands were better lit, more fully stocked, open for longer hours, staffed by unionized sales employees, occupied more desirable locations, and were subject to more stringent regulations by its landlords (railroads, airports, and bus terminals), it had no competitors to whom proportionally equal terms could have been offered. The evidence, however, established that defendant's stands competed with other retail newspaper dealers in that they purchased the same products from the same suppliers and resold these products unaltered in the same market.

3/ This issue was presented to the Court of Appeals, which said: "[E]ven if these payments were all no more than disguised price adjustments, as petitioners contend, they would nevertheless violate § 2(d) [of the Clayton Act, as amended by the Robinson-Patman Act, 15 U.S.C. § 13(d), which] was aimed explicitly at promotional allowances which have the effect of price adjustments." 300 F.2d at 109.

4/ The evidence indicates that payments were made on a weekly basis. The complaint's prayer for relief, however, speaks only in terms of monthly violations. For consistency, the Court adopts the monthly basis for calculating the number of violations.

5/ The government's brief indicates that the total number of violations was 117. The Court's addition, however, is 122.

6/ While defendant contends that it mistakenly believed the Order to apply only to the sale of magazines and not newspapers, the Order's language is inclusive, referring to "products purchased from any of [its] suppliers."

7/ The government contends that the total amount received by Union News from all its newspaper suppliers since January 1, 1966 was $237,094, though the complaint only alleged violations with respect to the Times, the Daily News, and the Post.

LETTERS TO AND FROM PLAINTIFF'S AND DEFENDANTS' ATTORNEYS DATED RESPECTIVELY JAN .10,28th,1974 AND APRIL 15th,1975

JA25

ROBERT W. FARRELL
ATTORNEY AT LAW

110 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501

January 10th,1974

Eugene Frederick Roth Esq.
230 Park Avenue
New York City,N.Y. 10017

RE: Daily Mirror Inc.,/
Ancorp.Inc.,et al.

Dear Mr. Roth:

On December 20th,1973 I wrote to you requesting that you produce Mr. William McCullough,President of Ancorp Inc., for examination on December 23rd,1973.

This letter of the 20th,followed up my letter of December December 3rd,to which I had no reply.

I am again writing to you to produce Mr. McCullough for examination January 31st,1974 at 2PM at the Courthouse,Foley Square together with all of the documents named in my letter to you dated November 23rd,1973.

Sincerely,

Robert W.Farrell

rwf/ms

ROBERT W. FARRELL
ATTORNEY AT LAW

JA257

110 OLD COUNTRY ROAD
MINEOLA NEW YORK 11501
67 Park Avenue
New York, N.Y. 10016

January 28th,1974

Barrett G.Kreisberg Esq.
104 East 40th Street
New York,N.Y. 10016

Daily Mirror Inc./Garfinkle
et.al.

Dear Sir:

On December 8th,I delivered to your office the original and ~~two~~ duplicate transcripts of the Examinations Before Trial and as of the above date have failed to receive sig ned copies of the originals.I also wish to advise you again,that we shall continue the examinations of Garfinkle after we have taken the depositions of William McCullough of Ancorp.

Today,the Hon.Judge Owens law secretary phoned my office with the request that we be present at his Court on the 7th floor of the Federal Courthouse at Foley Square on 1/31/74 Thursday at 3:15 PM and further requested that I telephone your office to advise you of that,so that you will be there.

Sincerely,

Robert W.Farrell

516-746-4330

rwf/ms

BARRETT G. KREISBERG
COUNSELOR AT LAW
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212-867-3380

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PLEASE RESPOND TO White Plains, N.Y.

JA257-1

April 15, 1975

Robert W. Farrell, Esq.
67 Park Avenue
New York, N.Y. 10016

Re: Daily Mirror, Inc.
vs.
New York News, Inc., et al.

Dear Mr. Farrell:

Enclosed you will find original depositions signed by Henry Garfinkle, dated the following:

October 11, 1973

October 19, 1973

October 31, 1973

Will you kindly acknowledge receipt of the within depositions by signing and returning a copy of this letter.

Very truly yours,

Barrett G. Kreisberg

BGK:ns
enc.

PLAINTIFF'S NOTICE OF APPEAL DATED JULY 29th,1975

JA258

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

DAILY MIRROR INC.,

Plaintiff

-against-

NEW YORK NEWS INC,HENRY GARFINKLE, AMERICAN NEWS COMPANY INC,,UNION NEWS COMPANY INC., and ANCORP,INC.

Defendants

----------X

Hon.Marvin E.Frankel

71 CIV 1211

NOTICE OF APPEAL

S I R S:

PLEASE TAKE NOTICE,that the undersigned hereby appeals to the UNITED STATES COURT OF APPEALS 2nd Circuit from the ORDER of HON.MARVIN E.FRANKEL dated ,July 3rd,1975 and filed at the office of the District Court Clerk,on July 7th,1975,upon the grounds that same is contrary to law and is in denial of due process as guaranteed by the Constitution of the United States.

DATED :JULY 29th,1975

TO: CLERK OF THE DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[illegible] Esqs
[illegible] 42nd Street NYC 10017

[illegible] Esq. 104 East 40th Street NYC 10016

[illegible] Esqs 39 East 68th Street

ROBERT W.FARRELL
Attorney for the
67 Park Avenue
New York,N.Y. 10016
516-248-8245

PLAINTIFF'S AMENDED NOTICE OF APPEAL
(Dated October 15, 1975) JA259

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

DAILY MIRROR, INC.,

Plaintiff

-against-

NEW YORK NEWS INC., HENRY GARFINKLE, AMERICAN NEWS COMPANY, INC., UNION NEWS COMPANY, INC., and ANCORP, INC..

Defendants

----------X

71 CIV 1211

AMENDED NOTICE OF APPEAL

MEP

PLEASE TAKE NOTICE, that the undersigned, to avoid any surprise, in the interest of clarity, and without admitting any insufficiency, hereby amends Notice of Appeal, dated July 29th, 1975, heretofore filed herein, to the United States Court of Appeals, Second Circuit, to conform to the scope of the already duly filed Record on Appeal in said Court, and to the Plaintiff-Appellant's Pre-Appeal-Pre-Argument Statement dated August 7th, 1975, duly served and filed in said Court, and to Appellant's Notice of Proposed Appendix, served herein, to read as follows, Nunc-pro-tunc:

> "...that the Undersigned hereby appeals to the United States Court of Appeals, 2nd Circuit, from the final order, and the decision upon which it was based, dated June 9th, 1975 granting judgment to the defendants on default, made and entered by the Clerk, upon said order of the District Judge, Hon. Marvin E. Frankel, on June 9, 1975, and from the same Judge's further decision and order of July 3rd, 1975, denying plaintiff's motion to vacate the said judgment and the decision and order upon which it was based, and for other relief, and from each and every part of the said decisions and orders and judgment as entered, upon the ground that same were contrary to law and facts, constituted abuse of discretion and a denial of due process to

plaintiff,and of other constitutional protections."

New York,N.Y.
October 15th,1975

Yours etc.,

ROBERT W.FARRELL
Attorney for the Plaintiff
67 Park Avenue
New York,N.Y. 10016
516-248-8245

To Clerk,United States District Court
Southern District of New York
Foley Square,N.Y .10007

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New York,N.Y. 10017

Barrett G.Kreisberg Esq.
104 East 40th Street
New York City,N.Y. 10016

Saxe,Bacon,Bolan & Manley Esqs.
39 East 68th Street
New York,N.Y.

EXCERPTS FROM DEPOSITION OF JACK UNDERWOOD

Sept.10th,1973 Oct.5th,1973 Oct.16,1973
of

Manager and Director of Circulation
of the Daily and Sunday News,published
by the Defendant New York News,Inc.,and
President and Chairman of the Board of
Gaynor News Inc.,a subsidiary of the
Defendant New York News,Inc.,

* Handwritten inserts to be disregarded.

A Advertising, circulation and promotion department, as well as marketing research.

Q Of New York News, Inc.?

A That is correct.

Q In connection with that service or employment do you have any other corporations with which you are associated?

A I am chairman of the board of the Gaynor News Company.

Q Is that a subsidiary?

A That is a wholly owned subsidiary.

Q In what capacity do you act there?

A As chairman of the board of directors.

Q Do you also act in connection with any other corporations functioning with the newspaper the Daily News?

A No.

Q Do those two corporations you have mentioned now embrace all your employment in connection with the operation and functioning of the Daily News?

A Correct.

Q Does the Daily News, to your knowledge, have any other corporate associations other than those you have mentioned in its operation?

Q Which you have mentioned.

A In the News.

Q Do you have any indirect association with all the others?

A Only indirectly would be the profitability of the entire company.

Q Insofar as the profitability of the entire company goes, you would be concerned with their operations in attaining as much profit as possible?

A I would be interested in attaining as much profit as possible, but I have no responsibility.

Q Do you have a consultative position with respect to them?

A No.

Q Do I understand now, Mr. Underwood, that you are concerned with the profitability of those other operations other than those which you have mentioned as being officered by you in one form or another, but that you have no authority in connection with them?

A I have no authority whatsoever.

Q Do you have the authority of consultation?

A No.

Q The right of consultation?

A No.

Q Prior to that, for how long had you had duties other than those?

A It might help if we were to go back to a point where I came to the News as an employee.

Q Would you want to recount that now voluntarily from the beginning, forward?

A Yes, I think it would save time.

Q Okay.

A I worked prior to my employment with the News, for fourteen years with the Los Angeles Times in various capacities, advertising, circulation, administration.

In October of 1964, I was employed by the New York News, Inc., which at that time had another corporate title, but its the same corporation, as their circulation manager.

From 1964 until, I believe it was 1969, I performed in that capacity.

1969 I was made director of circulation which was nothing more than a change in title. I maintained the same responsibilities.

Then at that same time I was elected an assistant secretary of corporation which was as officer of the New York News, Inc.

1973, in 1972 correct that, I was elected a vice

A Yes. I asked to have weekly sales checks like I have on all publications. I wanted to know how many papers were being sold, and also I do with the Times and Post and all the rest of the papers.

Q In the sense they are competitors of yours?

A In the sense they are competitors and I like to know what the market is.

Q Go ahead. Does that complete your answer?

A That is basic.

In other words, these things are sales functions basically and I am not that much involved in sales; while it is one of my responsibilities to direct, responsibility for daily sales of the newspaper fall on the shoulders of our circulation manager.

Q His name being?

A Carleton Rosenburgh.

His is the direct responsibility for maintaining the sales of our product every day.

Q In relation to any other competing publications?

A Well, competition relating to goals we established relating to newsstand sales, our home delivery sales, our store sales and under him, he has a sales organization that includes our city sales manager, our suburban sales

A No.

Q And these sales reports were made to you in the regular course?

A They were sent back to the sales manager who would compile the circulation.

Q And you got all those reports?

A No.

Q If you don't, does the company, the News have those reports in writing?

A No.

Q You mean these reports were made and just orally passed on?

A Orally passed on.

Q But never reduced to writing?

A We never reduced them to writing.

Q Are you able to say now that at any time or at no time there was a report or not a report in writing with respect to the operation of the Daily Mirror?

A There was a report, only one that I can recollect, that was when the Mirror first started publishing. I wanted to know who was behind the Mirror, who published the Mirror.

Q Did you ever find out?

A I found out and where they were being published and

out.

Q That you have already testified to; that I didn't mean.

A The second was that the News at sometime, I don't know when and I don't know any of the details, had purchased some of the assets of the Mirror.

Q When did you learn that in the course of your connection with the News?

A I can't be specific. Maybe '68.

Q Since 1968 you were aware that at one time or another the News had acquired the assets of the Mirror?

MR. HUGHES: No. Certain assets, not the assets.

A Certain assets. What they were, I didn't know then and still don't know.

Q And in all your performance of duties in connection with circulation, that fact that you have come to know of the acquisition of certain assets of the Mirror played no part whatever?

A No part whatever.

Q Do you happen to know who handled that acquisition transaction?

A No, I don't.

Q Do you know what year it was?

A Whenever the Mirror first started publication.

Q And when you say you were sending out inquiries in the course of your duties with regard to the Daily Mirror there was never any occasion in your mind for having to deal with the facts of the Daily Mirror so as to either confer about or communicate with your associates about the question of the Daily Mirror being an intrusive factor, competitive factor?

MR. HUGHES: That is a kind of confused question. I hesitate to let the witness answer.

The introductory phrases and characterization ought to be rephrased.

MR. KLEIN: The cadence with which the question was put is intended to overcome the complexity of the question and give the witness an opportunity to understand it.

A I will answer the question as I understand it.

The, my philosophy on newsstand sales is, the more product we have on the newsstand, the better it is for us. We think competition stimulates newspaper sales.

So, the thought of trying to climinate competition is something that doesn't cross my mind.

Q Within your duties?

Mr. Underwood has already stated he knew of no Robert W. Farrell when the name was given to him. Therefore, I have not cared to introduce Mr. Farrell's name. He is not a party, but the attorney of record, since the name Robert W. Farrell was not known.

Will you go back to the question, Mr. Reporter.

(The question was read as follows:

Did you learn that there came a time when the Daily Mirror discontinued publication in the 70's?)

A As I recollect, I was told that the Mirror discontinued publication for a period of time, then started up again and finally just completely went out of business, but I am not certain of those facts, but someone had mentioned it to me I am sure.

Q But can't remember any conversations or conferences with respect to the events of its final discontinuance as a publication?

A No.

Q In the City of New York and elsewhere?

A No.

Q And you say there was never any reference to

A Any other conditions.

Q Of any kind, and if there were any such conditions, you would know about it?

A I would know about it.

Q And so far as there might be conditions of which you don't know, you disclaim any such existence?

A That is correct.

Q That is solely within your own knowledge, of course?

A That is right.

Q Let me ask you, Mr. Underwood, it is conceivable to you within the performance of your job that some aspects of your job might fall into hands of others, either associated with you or superior to you?

A I would say that it is very conceivable that there are activities that go on from the day to day basis by my subordinates that I am not kept completely aware of.

Q How about your associates, your equal associates on equal level with you?

A They would have nothing to do with it.

Q You mean normally would have nothing to do --

A No. They would not have anything to do with it.

Q You mean their defined function --

A Maybe I am not sure what you mean by my associates.

copy but through other collateral arrangements, is that beyond or within your experience?

A I think that has to be limited. We have, for example, in our home delivery operation, we charge a lower price for papers that are sold in homes because we have to subsidize this kind of circulation because it is expensive to get, but we feel it is worthwhile so we subsidize it.

But we don't subsidize the copies that are sold on the newsstands.

Q Within the City of New York?

A Within the City of New York.

Q The five boroughs.

But subsidization to increase sales is not beyond your activities as circulation manager?

A I don't know of any newspaper in New York City today that is subsidizing to --

Q Increase sales?

A -- to increase sales unless you are referring to a home delivery operation. There they very well may be, but I don't know of any -- that are paying a fee to increase sales.

Q I didn't say anything about a fee.

A Or whatever.

I think there is probably no one that would qualify knowing about the nonexisting conspiracy which is the issue in this complaint, but as far as knowledge of what the News and circulation department does, there is no one at the News knows more about it than Mr. Underwood and I think that has been indicated by his answers here and your statement that there are areas that he is unaware of is unfounded when you are talking about the issues of the case because you haven't gotten to the issues of this case yet.

You have been dealing with a little bit of general background.

MR. FARRELL: Off the record.

(Discussion off the record.)

MR. KLEIN: Mr. Hughes has stated --

MR. HUGHES: I have suggested that in the intervening time while Mr. Underwood is out of town that you proceed with your scheduled examination of the other defendants in this case, who I understand were noticed even an earlier date.

I do think that before anyone else should be examined, you should finish with Mr. Underwood.

So far you have asked him only preliminary

background type of questions. We have not got to the heart of the case.

MR. FARRELL: Off the record.

(Discussion off the record.)

MR. KLEIN: In answer to the question asked by Mr. Hughes, as to use of the time, while Mr. Underwood is away on the trip, with the examination of co-defendant parties, the fact is that the attorney for Henry Garfinkle, Eugene G. Roth, Esq., has asked that this examination be put over until October 11th because he is going to be on trial for one month in the State of Florida and he wanted such adjournment to October 11th.

I want to modify that as to state that all of the other defendants except the News are represented by Mr. Roth and that request for adjournment to October 11th extends to the other defendants.

Off the record.

(Discussion off the record.)

MR. KLEIN: It is now understood that Mr. Underwood will be absent for a period of two weeks on a trip and that his examination will

Q How long have you known him?

A I think I first met Henry in 1965.

Q In connection with circulation of The News?

A In, at a dinner party.

Q Have you met him since in connection with circulation duties?

A No.

Q In other words, now as I understand you, you at no time ever had any dealings whatever with Henry Garfinkle in circulation matters affecting The News?

A I had maybe a few phone calls, but I never met him on circulation matters. I had many dinners with him, but circulation was not discussed. Socially.

Q How many dinners would you say you had with him?

A There are annual affairs like the Al Smith dinner and various charity dinners.

Q At any of them, had you ever discussed circulation problems of any kind with Mr. Garfinkle, at any time?

A No.

Q Do you know, as a matter of your own knowledge, whether other associates of yours were having contacts or communications with Mr. Garfinkle with regard to

Q Yes.

A Well, sometimes we would, I would go there for a cocktail with a group before going to dinner.

Sometimes I would go back to the apartment after dinner for the cocktail.

Q So as to be with him alone?

A Several times I was alone, yes.

Q What years are you talking about, what periods?

A I would say basically the years 19 -- this is from memory, this is 1968 through 1972.

Q And in no event prior to '68?

A I don't believe I was there before 1968.

Q But you had been in touch with Mr. Garfinkle prior to '68 whether at that time home, apartment or elsewhere?

A Socially only.

Q When you say socially, do you mean that you made it a policy of yours to exclude business from any such talks at any such meetings?

A The basis for our association at the time we got together was always socially.

Q But while the basis was social, didn't the meetings lead off into business?

A Oh, I must say that there had to be several times when Henry would say, "How's business?"

Q You mean that was the extent of the conversation, how's business?

A Yes, how's business.

Q But when the question was put there was no answer particularly?

A Yes, I would answer business is good or bad.

Q That is all you spoke about?

A Yes.

Q So far as executives of the Daily News making those visits to the apartment you know of no conversation you had there at the apartment?

A There were no executives of the Daily News attending.

Q No associates of yours of any of the companies here referred to under the aegis of The News attended with you at any of these meetings?

A No.

Q What years are you talking about?

A The same years, 1968 to 1972.

Q Mr. Underwood, to your knowledge, he also had a home elsewhere?

A He had two homes. His main apartment was around West 85th Street and Central Park.

A It was a Sunday in August of 19 -- it was either '69 or '70, I am not certain of that date, and I flew to, was it Cape Cod, on vacation with another family, and the four of us flew over to Marblehead and joined a party he had there for the day.

Q You met Mr. Garfinkle's son?

A Myron.

Q Yes.

A Yes, but not at Marblehead.

Q Did you meet --

A I have met Myron.

Q Did you meet Myron in an official capacity from time to time?

A I never talked to Myron about business.

Q At all?

A With one exception, and also Henry about the subject too, and that was when The Times pulled the business away from Greater Boston, one of the businesses he owns and he was greatly distressed.

Q He discussed that with you?

A Yes.

Q What was the name of the agency?

A Greater Boston.

MR. CANONI: Which "he," Myron or Henry?

A Between '64 and '69.

Q From '69 to '72?

A More frequent.

Q That applies also to Myron, the son?

A Yes.

Q Are you saying now that in connection with those more frequent contacts between '69 and '72 at no time was the Daily Mirror discussed?

A At no time.

MR. KLEIN: Note the witness now recalls after conversation with Mr. Canoni, his counsel.

A At one time that I can't recall when it was, one of my sales representatives told me that The Mirror was not being distributed on some of the Union News stands.

Shortly thereafter, Henry Garfinkle called and during the course of the conversation which was an invitation to a dinner he said he could not find any room for The Mirror on their stands.

Q Just tell us what he said to you as far as you recall and you said to him on that subject of The Mirror.

A As I recall, he said, "I cannot find any room on the newsstand for The Mirror."

Q Wasn't there anything that preceded that

statement?

Because I want the pro and con, the exchange of conversation from you to him and him to you as you recall it.

A As I recall, I said, "How is ~~The Mirror doing~~ Newsweek doing?"

He said, "I can't find any room on the newsstand for them."

Q So the only way The Mirror came up, you inquired, "How is The Mirror doing"?

A Because the reports came to me from one of my sales representatives, "How about The News on the stands?"

Q Called to inquire about that?

A He called; and during the conversation to verify whether or not the representative was right.

Q Did you express any pleasure with respect to his report?

A No.

Q Or displeasure?

A No.

Q Did you say to him, "Now you can make room because competition is good for all papers"?

A No, I didn't make any comment.

Q As a matter of fact, you believe that?

A Yes, I do.

Q But you didn't say at the time, "You could make room"?

MR. CANONI: Mr. Underwood, to make the record intelligent, I would like to slow down the pace of the questions and the topic.

Now, Mr. Klein has not given you an opportunity to answer the question fully he asked.

I would like you to answer two questions, I think, that would expedite things.

I would like the date of this telephone conversation, and I would like you to answer the question precisely what was said by you and Mr. Garfinkle, and Mr. Klein would take it from there.

Q I welcome that if it is a correction.

A I cannot give you the date of that conversation. I don't remember.

Q Well, month or year.

A I don't remember the month or the year.

Q In any event it was between 1970 and '72?

A It was during the period that The Mirror was publishing.

Q Go ahead.

MR. CANONI: Let me state --

MR. CANONI: I think the pending inquiry is, is there anything else in this conversation you haven't told us, Mr. Underwood.

MR. FARRELL: And the period of time to the best of your knowledge.

MR. CANONI: Yes.

THE WITNESS: Off the record.

MR. CANONI: Yes.

(Discussion off the record.)

A My conversation had to have been sometime the first quarter of '71.

Q Did you tell us everything he said to you and you said to him at that time?

A Yes.

Q Was this a phone conversation?

A Yes.

Q And a short one?

A Yes.

Q And at that time he called you to tell you -- he called?

A Correct.

Q And in response to your question of, "How is business -- was it "How is the Mirror doing"?

A Correct.

Q You did in fact at sometime prior to that conversation learn that The Mirror was for public sale on the stands of Garfinkle, you had learned that?

A No, I hadn't.

Q So as far as you knew, there was never any displays of The Mirror on the American News stands or the Garfinkle stands?

A As a matter of fact, I thought The Mirror was on display everywhere and they were selling everywhere and I didn't know they weren't being displayed on certain stands until the sales representative told me about it.

Q And until Mr. Garfinkle told you there was no room for it on his stands?

A I referred to that.

Q You remember when the public announcement came out that The Mirror would sell on the stands of the city?

A It seems to me there were certain announcements. I am not sure when the last one was made.

Q Did you at that time have any calls with Mr. Garfinkle with respect to the appearance on his stands of The Mirror?

A No.

Q In other words, would you say you avoided

superiors as a competitor problem at any time?

A We discussed The Mirror in terms of how it was selling so, I guess, that might be in terms of competition.

Q And how it was selling on the Union News Garfinkle stands?

A No, just basically how it was selling.

Q Weren't you especially ever concerned with the outlets of the Union News, American News and the Garfinkle interests?

A I had no reason to be concerned about it.

Q Then or at any time?

A At any time.

Q That goes back as far as '64 with regard to the Garfinkle outlets?

A The only concern I ever had about the Garfinkle --

Q Going back to '64 and going all the way forward.

A The only concern I had was payment.

Q Payment for The News?

A For The News bill.

Q That he was selling?

A Right.

Q But you say, you are not implying there or

undertook to displaying The Mirror or selling The Mirror on his stands at any time?

A I don't know that.

Q When all the reports that came to you weekly, didn't you get any information as to whether this great distributor with 650 stands was displaying and selling The Mirror?

A I just naturally assumed he was selling The Mirror.

Q But when you heard there was no room on them, didn't that cause you to look especially into the subject?

A It really didn't.

Q Now you knew that the only tabloid on the stands during that period in competition with your tabloid newspaper was or would be The Mirror?

A Well, we have The Post also.

Q You call that a tabloid?

A Sure.

Q The Mirror was the only morning tabloid in competition with your morning issues?

A Morning tabloid, yes.

Q Nevertheless that didn't seem to bring any special reaction from you either in connection with your reporters, your subordinate reporters or on your

at that stand as to how many copies of the Daily Mirror they were getting or selling how many?

A I do not know.

Q Do you have any information, to the best of your knowledge, as to whether the Daily Mirror was brought into your executive meeting on Monday for discussion?

A When The Mirror was first printed, we got copies to look at it, yes.

Q At your Monday morning meetings?

A Yes.

Q Would you have any knowledge as to whether the editorial department did the same?

A I can only say there was a comment passed to me at one time that it was peculiar that our front pages are running almost identical, but that is about the only thing.

Q Did you have occasion to look through the Daily Mirror?

A Yes.

Q Study it?

A Yes.

Q Do you think that you can express an opinion as to what you thought of that newspaper?

A Yes. I thought that printing-wise, I thought it was excellent reproduction.

I forget whether it was offset or not, but it looked like it may have been offset.

Q It was offset?

A I thought the production was very, very good.

I thought there were a couple of things that ran contrary to its success and that was the fact that they apparently had some pretty tired writers who at one time had a pretty good name, but a whole new generation grew up without knowing who they were. That is about all I can tell you about it.

Q Do you live up in Westchester?

A Yes.

Q How do you get to your office, to the Daily News?

A By train.

Q What train do you get on?

A When it is on time, I usually catch the 9:01 out of Larchmont.

Q Is there a newsstand at that station?

A Yes.

Q Did you buy a Daily Mirror at the newsstand or did you see one on sale there?

A I don't recall seeing one on sale there.

Q Is that at the Pelham station?

A No, at Larchmont.

I don't think I saw one on sale although I can't really be quite certain, but I buy my papers.

I have my own paper home delivered, but I buy The Wall Street Journal and The Times.

Q Do you know who operates that newsstand?

A That stand is Union News Company.

Q With regard to this circulation representative's report, the record you have which is marked interoffice correspondence on The News, that is a different report than the one which we called the circulation representative report which the alleged sixty men --

A Right.

Q This is a different report?

A That is memo, correct.

Q Is this based on the compilation of what you get from these reports?

A I cannot answer that. I don't know where the figures were developed, how they arrived at them, who supplied them.

That was the report I got and I suspect that --

MR. CANONI: No, don't suspect.

You would have no such knowledge?

A I have not.

Q I don't believe you have answered my question as to the source of your information pertaining to the duties you had to acquire this information.

Did you in fact acquire such information as to when we were printing and how much we were printing, et cetera?

A I could only answer that partially.

I was told that you were printing somewhere over in Long Island. I think they told me you were printing in Long Island City.

Now, the source of the information, I don't know where they got it, so I would recommend that you talk with somebody, you know, like Harry Kane or one of the other fellows in the department because they would, you know, they would have the knowledge.

Q Who informed you of whatever information you obtained?

A That would have been Harry Kane.

Q It was not any one of your sixty men on the street?

A No. They went to Harry and Harry put the stuff together.

Q When you were advised by rumor or by fact or by any other document that the Daily Mirror was not sufficiently financed, how did you come to that conclusion?

A Knowing the economics of newspaper publishing in New York, I felt that it was underfinanced.

Q How much money was it financed for?

A I am not sure. I get a lot of different viewpoints.

I thought it was around $50,000.00, but I also understood you were making a little bit of money on your circulation.

No newspaper is going to make it on $50,000.00, so I guess I was wrong there.

Q This report is dated January 12, 1971. It mentions Gaynor News.

Was Gaynor News involved with the Daily News?

A They distributed our newspapers in Westchester County.

Q Have you acquired control of Gaynor News at that time?

A No, we had not.

Q What date did you acquire control of Gaynor

News?

A March 31, 1972.

Q At what point in time did your discussions start toward acquiring Gaynor News?

A November, 1971.

Q Is it a fact that it can be said that your relationship with Gaynor News, in view of the fact that they were distributing your News, was a friendly one?

A I would consider our relationship with Gaynor News Company a friendly one, yes.

Q So that the information you have on this sheet that our price structure to Gaynor News was $8.00 to distributors and $11.75 to dealers:

Could that information be obtained from Gaynor News?

A Yes.

Q You state it could have been friendly. In fact was it?

A It was feiendly.

Q When you say that The News, the information of the question about getting our price structure from the Daily News, did you in fact obtain such information from Gaynor News?

him?

A Yes.

Q Did you have dinner with him?

A Yes.

Q On how many occasions?

A Numerous occasions.

Q Many?

A Many.

Q A hundred?

A No.

Q Fifty?

A We made it a point to have a golf game a year. I was a member guest, which he had at his country club and I would say maybe during that period of time I may have had just one, maybe a half a dozen dinners, we have had several luncheons together.

We talk about business, we talk about what we could do to increase our sales, we talk about some of the interesting problems, unions, I think.

Q What area of distribution did Gaynor News cover for the Daily News?

A He covered all of Westchester and part of Connecticut and there was some special arrangement he also covered Yonkers.

Q Did he have a piggy back arrangement with other wholesalers upstate, Canada, where you would give papers to him and he would make other subsequent deliveries to other dealers throughout the state?

A He acted as a trucker.

Q What places? Up to Montreal?

A No. He would cover basically lower New York on just some of our advance sections, that is all.

Q How many papers were delivered to Gaynor News of the Daily News, daily and on Sunday?

A I will supply that information. I want to be correct. I just can't be correct now.

Q Can you give me a rough guess?

A On the daily a hundred and some odd thousand. On the Sunday 165,000, maybe.

Q Can you give me the price structure of Gaynor News on the daily and Sunday paper?

A The latest --

MR. CANONI: What time are you asking about?

MR. FARRELL: General business conditions.

MR. CANONI: What time, 1971, when?

A Seven ten.

Q Per hundred?

A Per hundred.

Q And --

A I could be off.

Q I will take it as the day.

Sunday?

A Fifteen, twenty-five, I think it is.

I want to be perfectly candid on these things. I have kind of gotten away from the pricing structure.

Mr. Carey and some of the other fellows will be able to give you more specifics.

Q When you came to the Daily News in 1964, what was the price per copy of the daily newspaper?

A Seven cents.

Q And the price of the Sunday newspaper?

A Twenty.

Q When was that price increased to ten and twenty-five?

A Can I supply that for you in written form because I can't remember the exact date.

Q By the way, on the delivery of a hundred plus some thousand per day and I think you said 125,000?

A 165.

Q Can you at that time estimate your percentage

a request.

This being a conspiracy action in restraint of trade the facts leading up to the charge '71, the underlying conditions can all be relevant in the cumulative nature of these developments preceding the commencement date of offenses alleged in the complaint; that all the events preceding and leading up to that are relevant and leading in to part of the acts alleged.

MR. CANONI: As long as we are making statements on the record, I consider that an incorrect statement in both the allegation of complaint and we have taken the request under advisement and if the information is readily accessible and not too burdensome we will consider supplying even though its relevancy has not been demonstrated.

Q Were you actively engaged in fulfillment of your duties in the period of the fall of 1965?

A Yes.

Q Specifically in the month of August?

A I may have been on vacation in August. I don't know. I would have to check the records on that.

Q I believe that you stated in the previous

Q The only way you can buy a newspaper was downstairs?

A The only way you can buy the newspaper at the railroad station was down there.

Q Can you describe how many newspapers were on that Union News stand, was there a special place for magazines and a special place for newspapers or did they sell both?

A They sold both. They had a rack for the magazines and then they had a little counter kind of thing for papers.

Q Can you tell us how much space was reserved for newspapers since it was seven feet wide or long rather?

A I would say the whole thing was newspapers.

Q At what time in the morning did you come down?

A I try to catch the 9:01.

Q To the best of your recollection, can you recall what newspapers you saw there at nine o'clock or quarter to nine, whenever you got there?

A The News, The Times, and basically just The News and The Times.

Q And that prevailed almost constantly in your

trips to the City of New York, making the 9:01?

A To the best of my recollection, that is all I can recall.

Q That would be a period of a few months, the whole year.

Was it that way in 1970?

A Yes. They have several bundles of each paper there.

Q Which bundleswere there?

A They might have, depending on the sale --

Q You mean bundles of Daily News and bundles of The Times?

A Right.

Q And during the period in which the Daily Mirror was being published you never saw anything on the stand selling the Daily Mirror?

A I can't recall that.

Q The Daily News is sold -- or can you tell me the various sales points of the Daily News?

When I say Daily News, let the record reflect I am reflecting the publication daily and Sunday News. If it is necessary to separate them, I will.

Can you tell me where The New York News is sold?

distribution through Gaynor?

A If you want an exact answer, I can't provide it.

Q Give me a rough estimate?

A Between three and 500, I guess.

Q Can you give me a rough estimate as to how many newsstands The New York News is distributed through the American News Company and its subsidiaries?

A They have closed so many, I don't really know what the current count is. Got to be between five and 600, I imagine.

Q Can you estimate or will you provide at my request the total sales of newspapers and the income derived from your distribution at those five or 600 newsstands?

MR. CANONI: What period of time?

Q 1964 to 1970, '71.

MR. CANONI: That I will take under advisement.

Q As circulation manager of the Daily News and other titles you hold, will you agree that the franchise of distribution with Union News was more valuable than the Gaynor News?

When I say more valuable, was the revenue greater from your distribution with the Union News

Company, or whatever other company, subsidiary of Ancorp, would you say as a circulation director and from the knowledge of the business you are involved in, that the revenues were greater from Union News than from Gaynor News?

A Revenues were greater.

Q Substantially greater?

A Substantially greater.

Q In view of that, you had many meetings with Gaynor and only one meeting or two meetings with Garfinkle despite those circumstances?

A Correct.

Q Now, in your distribution in which eighty-five percent of your daily is distributed within a fifty mile area of New York City, how much is that eighty-five percent of your New York newspapers, tell me approximately the total amount of newspapers involved in this distribution?

A We have about in the daily --

Q I am fixing this at the point when you came with The News, and took over generally speaking.

A I am talking right now because there are a lot of other factors that are involved that I don't really think are pertinent, but I will give you the figures as

Q Other than Boston where Garfinkle in Boston Distributing Company, is there any other company Garfinkle owns that you distribute to?

A None that I know of.

Q You think there is such a situation?

A I don't believe so.

Q How many newsstands would you estimate?

You have given us an estimate on the Gaynor and given us an estimate on Union.

How many newsstands would you consider a point of distribution other than Union News, do you have in your metropolitan and suburban area outlets?

A I would say it would run between ten and 13,000.

Q And what is your price structure to this ten or 13,000 outlets?

A May I answer that question by saying I will supply that to you in written form.

MR. CANONI: At what point in time?

Q 1964 to '71.

MR. CANONI: We will consider that.

Can we go off the record.

(Discussion off the record.)

MR. CANONI: We have determined that the price of the daily paper was increased from seven

A No difference at all.

Q The same thing.

Is it your opinion that the amount of money the Daily News earns through distribution from Ancorp is greater in total sum than you derive from the other outlets, taking away from the ten to 13,000, the five or 600 in the metropolitan and suburban area, is your income from Union News or Ancorp greater than it is from all the other stands that you distribute?

A No.

Q Throughout your dealings with the Union News Company or Mr. Garfinkle from the time you were first employed by the Daily News which date you fixed in 1964, were you ever asked for any rebate by Garfinkle or Union News?

A No, I was not.

Q Would you be aware of any situation involving a request for rebates if one were made?

A Yes, I would be.

Q You stated that you first became aware of the publication of the Daily Mirror in the early part of January, 1970; is that the date you set?

A '71.

Q On your first report, January 12, 1971?

A Yes.

Q At which you learned or attempted to learn many things, which we went through.

Did you learn who was distributing the Daily Mirror at that time?

A No, I did not.

Q When did you first learn who was distributing the Daily Mirror?

A It came to my attention that, and I am still not certain this is a fact, but several months after you were publishing that Archie Gordon was distributing your paper.

Q You stated you never met him?

A No, I haven't. I stated I don't recall having met him.

Q Is that the same Archie Gordon that is a truckdriver for the Daily News?

A I believe it is, yes.

Q When was he first employed by your company?

A I don't know.

Q Will you get that for us, please?

A Yes.

MR. CANONI: Yes, we will.

Q Is he currently employed by The News?

I mentioned, American News, Union News, and Ancorp?

A I intercepted a call late one night from a newsstand operator at the Port Authority building, complaining about delivery of the News.

Q About what of the News?

A Delivery. But I am sure he is not an officer of Ancorp.

The only two officers that I can recall would be Henry Garfinkle, Bill McCollough, and they had an attorney, I forget his name, who died. I had a conversation with him.

Q With respect to problems of circulation at the News?

A No. With respect to an FTC case.

Q You refer to the case that took place in the year of '67, '68 and so on?

A Yes.

Q At that time you were manager of circulation?

A Correct.

Q You became entirely familiar, did you, in the course of that case, with the details of it?

A I gave a deposition.

Q That deposition is now a matter of record in court in that case, presumably?

A In terms of what?

Q Any problem or any situation that the existence of the Daily Mirror as a competitor or as a newspaper publication might raise.

A First of all, as I have said on the record, I did not consider the Mirror to be a strong competitor.

Q Did you consider it could be a competitor?

A I considered it to be a minor factor.

Q As a competitor?

A Yes.

Q When you did something, you had in mind the previous history of the Mirror, prior to '65?

A No. I had in mind that it was basically a publication that was directed to horseplayers, and that there was a possibility that a horseplayer might find that publication a little more beneficial to his interests than the sporting information on horses that the News put out.

Q You testified, didn't you, that the front of the Daily Mirror was like that of the old Mirror?

A That I have testified to, and found out that it was peculiar that the front page of the Mirror usually ran the same picture as the front page of the Daily News.

Q And are you able now --

A Let me put this in the record. And sometimes the same headline.

Q Were you implying that the Daily News got it from the Mirror or the Mirror from the News?

A I am not implying anything now.

Q Insofar as they ran the same old front of the original newspaper, and insofar as they ran picture fronts or headlines similar to yourself, you would find them in some manner or other a competitor, wouldn't you?

A There would have to be a minor competitive factor.

Q In all the meetings that you say you had with either the newsstand staff working under you, or with your co-officers or executives of the News, the problem never was discussed?

A I didn't say that. I said I used to get reports on our Monday staff meeting in the circulation department on the circulation of all newspapers, all publications, that were on the stands, with the exception perhaps of the Wall Street Journal and Baron's that used to come up now and then in casual conversations, maybe in the hallway. An executive would ask me,

how is the Mirror doing? I would say, it looks like they are selling 50 per cent of the print order, or maybe 90,000, whatever.

Q Did you give any reason what was in your mind to these people who asked as to why they were selling only 50 per cent of the print order?

A No.

Q You never discussed the reason or reasons for what you considered the minor factor status of the Mirror, with your employer principals or your co-executives?

A Only the fact that we thought that it was a poor product and couldn't exist in the marketplace. That the expenses of doing business in New York in the newspaper industry were extremely high and we didn't feel it was properly financed.

Q You did take up all those additional matters?

A No. Just casual conversations.

Q This was part of your duties, wasn't it?

A To do what?

Q To discuss these matters, and if the Daily Mirror offered it at a greater profit you would have more serious discussions as to how to meet that

competition?

A I think that is a fair statement.

Q In your position as manager of circulation, until you became director of circulation; and as director of circulation, what would you say was the prime objective of your function or duties, if there was one prime objective?

A The prime objective was the sale of the most newspapers at the lowest possible cost.

Q With presumably the greatest profit to your employer?

A Production of the greatest revenue to the employer.

Q Were you making a distinction between revenue and profit to your employer?

A Yes.

Q Were you implying whether it wasn't so much profit that your employer was interested in, as revenue?

A No. The distinction I am making here is that rarely does circulation revenue cover the cost of newsprint and ink. That is just a fact of economic life on newspapers, with few exceptions.

Q What you mean, I gather, is a specific

1969-1970, do you remember?

A I don't remember.

Q You have no recollection of having, in the course of your duties, discussed the contents of one or more articles appearing in the Wall Street Journal with respect to the conditions of the trade, particularly with regard to American News, Ancorp?

A I can remember one on American News and Ancorp. That was a Wall Street Journal article that I think reported the FTC findings, or it reported -- there was a report on their activities. That was back in 1967, maybe in '65 or '66.

Q The newspaper articles were in '65, '66?

A Or '67.

Q '69?

A I don't think in '69, but I don't know. It could have been.

Q To refresh your recollection, may I show you the article, and you can tell me whether it was the one you saw by just looking at the contour, without regard to any other notes on there. (Handing)

Here is the original. This is the front page.

MR. KLEIN: Do you have a date on that?

area of New York or otherwise, did you keep memoranda of these conversations you referred to?

A No.

Q Do you mean your file is completely devoid of any memoranda written by you or noted by you after conversations with either American News, Union News, Garfinkle, son and father, and McCollough?

A I would say that is correct.

MR. CANONI: He answered the question. May we have another question, Mr. Klein?

Q Were you familiar with one Willie Levine?

A I know Willie Levine.

Q Who is Willie Levine, in connection with circulation of the Daily News in any form?

A Willie Levine is Henry's brother-in-law, I believe, and I believe he runs Manhattan News.

Q For Henry Garfinkle or on his own right?

A It's all part of the Union News complex, I believe.

Q The Union News complex, did you say?

A Yes. We don't do business with him.

Q Have you had conversations with Willie Levine in the course of your dealings with the metropolitan area in the circulation of your paper

ORAL TESTIMONY(EXAMINATION BEFORE TRIAL) *

Oct.11th;Oct.19th and Oct.31st,1973

of

HENRY(HARRY) GARFINKLE

Defendant in person,and Chief Operating Director,Officer and Manager of three co-defendants ,American News Company Inc., Union News Co.,Inc., and ANCORP ,Inc..

* Hand written inserts to be disregarded.

Q Anything in which your companies or units were active, any field in which your companies or your units were active you felt at the airport there might be some opportunity?

A That is right.

Q There is no question you acted amongst, that is, nationally?

A Yes.

Q And interstate?

A Whatever you call it, interstate or nationally.

Q Give us the rest of your duties, if you can remember them, more of the duties.

A More of duties I can't. You work twenty-four hours around the clock.

Q You work twenty-four hours?

A That is what you got to call it, that is what the chairman has got to do, work twenty-four hours around the clock.

Q Do I understand your duties called for your working twenty-four hours around the clock throughout the years you mentioned?

A That's right. Unil my vacation time.

MR. ROTH: You didn't sleep at all?

THE WITNESS: Didn't sleep n' all.

Q Any other duties besides those you mentioned?

A That was enough.

Q In the case of a specific newsstand, for example, would you have anything to do with respect to policy operation on that newsstand under your control?

A Absolutely not. A policy has been set probably ninety years.

Q Ninety years?

A Ninety years.

Q Was that policy to make the maximum amount of money?

A No.

Q It had nothing to do with money?

A It had absolutely nothing to do with money.

Q Tell us what it had to do with.

A Because if a policy newsstand in any given stand or any given city the stands would be clogged up with more material than any big department store in the country would be.

Q Mr. Garfinkle, try to get my question again.

A Yes.

Q I asked you with respect to any particular newsstand that came under your jurisdiction within your twenty-four hours a day labors, did you have

anything to do with the policy in the operation of that particular newsstand?

A No, sir.

Q At any time?

A At any time.

Q Within the entire nineteen years of your operation?

A That is correct.

Q And in the entire nineteen years of the operation you were never called upon to make a decision with respect to what a particular newsstand under your jurisdiction might or might not do?

A Never did.

Q Is that because your function was on a much broader scale?

A That is right.

Q So you couldn't attend to such a detail?

A That is correct.

Q Does that also go for the general acquisitions of newspapers, against the acquisition of restaurants, spots on stands?

A That is correct.

Q With regard to the acquisition of newsstands, you never had anything to do with that, never?

MR. CANONI: How do you spell Krause?

A I don't know.

K-r-a-u-s-e.

Q Is he a salaried man?

A Yes.

Q Were they on salaries?

A On salaries.

Q You had nothing to do with that?

A I can't control six or 7,000 people.

Q Whom was that left to, to determine as to the salaries of these people in charge of newsstands?

A Mr. McCollough, the president.

Q Would you say now for this record here that in all matters with respect to newspaper operation distribution, wholesale, retail circulation, Mr. McCollough was in exclusive charge?

A That is correct.

Q And you never participated whatsoever in any of the decisions affecting those products?

A That is correct.

Q Unqualified?

A Unqualified.

Q What was Mr. McCollough's salary?

A I think [illegible], 50,000 a year.

business," you are referring to Ancorp?

A That is right.

Q Do you individually or in connection wit anybody else have any distribution businesses other than that, apart from that?

A Yes.

Q So when you said we are not, you meant Ancorp?

A Ancorp.

Q But you have others?

A My family has others not in the newspaper business.

Q Wholesale circulation?

A Wholesale.

Q Of newspapers?

A Magazines.

Q Not newspapers?

A No.

Q Let me ask you, does Ancorp ever have anything to do with the distribution of magazines in any way?

A None whatsoever.

Q So that by that answer you include that at no time would Ancorp or American News previously ever attempt to assist the distributing companies owned by you, which you testified to, for the placement of their

A That is correct.

Q I now ask you, Mr. Garfinkle, you let us know, for example, dealing with the New York Mirror, did you have anything to do with the officials of that company at any time?

A The new one?

Q The old one.

A No.

Q With regard to say The New York Daily News organization, you have nothing to do with this, with them pa ticularly?

A No.

MR. ROTH: The Daily News.

A No. I meet sometimes in restaurants, but I don't discuss business with them.

Q Not at all?

A No.

Q Now, with regard to The Times, for example, you have no occasion to have anything to do with the officials of The New York Times?

A No. I am talking about the big fellows, you know.

Q Were you acquainted with any of the facts regarding the termination of The New York Mirror when it

is a specialty in the newspaper business.

Q Wholesale or retail?

A Retail is, you move any newsstands five feet, five feet out of the direction of a traffic of people you will lose sales. I am talking of five feet.

As far as distribution is what I do, no.

As I am saying, not to kid you, Mr. Klein, is if you could amalgamate with the drivers union, I am talking in general now, to cut down, you are a specialist on this saving labor; but as far as selling retail papers, there is no specialist in this country and a customer will not walk seven feet out of his way to get a newspaper.

Q As between all the directors of your company?

A Yes.

Q And Mr. McCollough?

A Yes.

Q Would you say that your judgment with respect to the operation of newsstands was to be pretty well followed?

A Well, in discussion if a director would realize what you are doing, and I think we had intelligent directors, they would go along with what you want.

Q I am talking about what you would recommend.

specifically did when this Daily Mirror came into being with respect to the Daily Mirror and your newsstands?

MR. ROTH: What did you do, if anything?

A I didn't do anything. The first thing I knew they had it on the stand. That was McCollough and the men's decision downstairs to make.

Q They never discussed it with you?

A When it came out they never discussed it with me.

Q Before, they never consulted?

A With me?

Q When it went out of business.

MR. ROTH: You mean it went off the stands.

Q When The Mirror went off the stands it was never discussed with you?

A It was never discussed with me outside what I heard myself.

Q What did you hear?

A On television, The Mirror closed.

Q Other than that with respect to the condition of your newsstands, and I think you testified you had about 850 newsstands at one time?

A Throughout the United States.

Q About 850?

A Yes. We had about 110 in New York City in the six,

A Passing.

Q Had no particular concern of yours?

A No, because when we give out a pink --

MR. ROTH: That is enough.

Q I understand you were just about to say what, a pink ticket. Will you explain.

A A pink ticket, to explain it, Mr. Klein, so you will have it.

The newspaper that we handle, all the newspapers, when they give, a driver delivers the paper, he gets a pink ticket which is like cash.

MR. ROTH: What does a pink ticket say? Tell us what it says.

Q Have you finished the answer?

MR. ROTH: Explain the pink ticket.

A If they will understand what this business consists of.

A fellow makes out a pink ticket.

Q The same one ticket if the stand drew 1,000 papers?

A One kind or if he draws five papers, same ticket, same operation.

I want this fellow, Mr. Farrell to get the synopsis of what this business is.

everybody will including Mr. Garfinkle.

MR. ROTH: We want to get it over, but we will make a day available and about two days; not another day, and another day.

We will make them all available.

And I assure you, you are not going to wear us out.

Sibscribed and sworn to before me

this ____ day of _____ 1973.

---

as adopted by Mr. Garfinkle?

THE WITNESS: That is right.

Q The American News Company went out of the magazine distribution business --

A That is correct.

Q -- in what year?

A 1957.

Q Was that by resolution of the Board of Directors?

A For the record, everything the company does is by the resolutions and by the Board of Directors.

Q Including that transaction.

A Absolutely.

Q And what year was that?

A '57. '57, '56, something like that. I don't know.

Q And when did you organize the Manhattan News Company?

A Manhattan News Company was in business for 30 years. That's bringing it back into the 1940's. Which is a separate company entirely. American has absolutely nothing what to do with that.

Q Mr. Garfinkle, may I ask you to please answer my questions in any way that you can without

what do you call it? -- U.S. News.

Q Are you an authority on this business, Mr.Garfinkle?

A I think I am.

Q Would you stand corrected by my telling you that Select Magazines distributes Time-Life?

A They took it on, now you are talking about recently, or six years ago, took on these clients --

Q Isn't that what I asked you?

A No. Not as a profit sharing thing there. If you go over and you said I am an authority, I can tell you about being an authority.

They, Select Magines, if you want to know, is a profit sharing company that each publisher that goes through there pays a certain percentages of profits whatever materialized.

Q What would you call Select Magazines, what business are they in?

A National distribution of magazines.

Q Right.

That within the past six years distributed Time-Life, etc.

A That is right.

Q And that's exactly what you didn't say a

few minutes ago.

MR. KLEIN: Please, now, strike that out.

MR. KREISBERG: Off the record.

(Discussion off the record)

Q At the Union News stands, you carry newspapers there?

A They carry newspapers.

Q And how do those newspapers reach those stands?

A By distributors.

Newspaper distributors. Newspaper wholesalers.

Q Physically, I am asking you.

A Physically? Howwould you describe it physically?

MR. KREISBERG: Truck delivers them.

A A truck delivers them with a man that's a union man, as you know, either comes through a newspaper --

Q A truck.

A A truck, yes.

Q And when that truck leaves a bundle of papers, he leaves or gets a receipt?

A Gets a pink ticket.

Q He gets a receipt from the newsman.

A For the individual paper that he brings, he

Q Are there times when he might find a bundle missing?

A This I don't know. With all these stands, he might have found bundles missing, that was his hard luck. That agent was fully responsible for whatever he receives at the stands.

Q At the end of the given period, if an agent finds 500 papers short, or 50 papers short, what do you do about that?

A We take it out of his -- they are all bonded, they are all under, taken out of his salaries for the stand. He's the one that's fully responsible.

Q Does he talk to the man who delivers the papers?

A He certainly does.

Q And tells him that he's 50 short?

A That is right.

Q And are there times when the man who delivers the paper will give him 50 extra copies to cover that shortage?

A If he gave it to him, this I don't know about, that's up to him, that's between the agent and the man that delivers the papers.

Q Do you have any knowledge that they do that

that was my responsibility.

Q I am talking about the driver.

A That is right.

Q If you told him he was 50 papers short, would he give you 50 extra papers?

A If he was short, he had to. I wouldn't give him the pink ticket then.

Q You would change the pink ticket to the shortage.

A I wouldn't give him a pink ticket. I only give him a ticket when he delivered the papers.

I wouldn't trust them for as far as I can throw a safe.

Q Do you carry a newspaper on your union newsstands called Il Progresso?

MR. KREISBERG: When?

Q All of these questions that I am going to ask you now cover a period from 1969 to present.

A 1969 to present.

Q To the present date.

Did you carry then and now --

A We carried, I don't know about now, we carried it then, probably. The Il Progresso.

Q Do you carry El Tiempo?

A Kennedy, or I will stop at LaGuardia, sure, I am there, I have got to look at them.

Q And you talk to the men.

A Never talk to them.

Q But you observe what you see?

A What I observe, because I never talk to the men.

Q Are the Daily News' delivered to the Union News Office by daily news trucks?

A That is correct.

Q And does each Daily News driver get a pink slip from you?

A That is right.

Q And you pay, your company will make payment to the Daily News directly?

A That is right.

Q What is the price structure --

A I really don't know.

Q You never knew?

A Well, if you want to go back when they were selling for two cents, five cents, --

Q I would like to know your price structure at two cents.

A I don't remember.

Q How about five cents?

A Thirty years ago, five cents, I think they were three-and-half cents a copy.

Q $35. a hundred?

A Three-and-a-half, $35.

Q At seven cents?

A There I don't know. I don't know seven. Because they are, the Daily News is sold out of town and New York City, and out of town they get fifteen cents for a paper, New York it's ten cents. I know twenty-five, if you ask me what the twenty-five cent price structure, I don't know.

Q Who would know all of these answers?

A The man that handles thepapers for the Union News Company. They got the price structures.

Q Would you say Mr. McCullough would know all the answers?

A McCullough would know, all the other men that I mentioned. And the Comptrollers and the auditors of the company would know.

Q Have you an idea or estimate as to how much money Ancorp pays to the Daily News each year?

A Absolutely not.

Q Do you issue that in your annual statement?

A No. How can you? In a statement you never--

Q Do you list the amount of income in your annual statement?

A The total income of the company.

Q Right.

A You are talking about eight divisions here.

Q And do you break that down into resturants, magazines.

A No. No.

Q Just a lump sum?

A Lump sum.

Q Could you estimate how many papers -- I withdraw that.

How many papers a day does Union News Company sell of the Daily News?

A I really don't know.

Q Neither daily nor Sunday?

A No. I don't know.

Q Who would have all of the information necessary to answer these questions?

A The men that handle the newspapers division for Union News Company.

Q And you as the executive head of this company don't know any of these answers?

copies to be returned?

A Well, we get five copies some places, it could be the New York Times they didn't sell for that day, and they returned.

Q Give me the reasons.

A I don't know what the reasons are.

Q They didn't sell?

A They didn't sell.

Q They arrived late?

A Whatever. It might be a million reasons. I can't tell you.

Q Would one of those reasons be they were not put on display?

A No, sir.

Q Were that they were put under the counter?

A No, sir.

Q Didn't you experience putting newspapers under the counter with the New York Times in a law suit brought in this courthouse?

A The New York Times, the paper, the New York Times, in the metropolitan area sell enough to be put out in the front of the stand.

Q That isn't my question, Mr. Garfinkle.

A I don't know how to answer that.

Q Let me ask you the question again.

Didn't you during the course of time put the New York Times at your Union newsstands under the counter?

A No, sir.

Q Never?

A Never.

Q Okay.

You were given a cease and desist order by the Federal Trade Commission in 1962 when you were collecting approximately $26,000 a year for the Daily News, and $30,000 from the New York Times; is that true?

A That's in 1962. Yes.

Q Isn't it a fact that despite that cease and desist order you continued to collect those subsidies until 1969?

A We didn't get --

Now, I have to phrase the answer different.

1962 there was a desist order, the case was only on magazines. Only on magazines.

In 1969, they came out into the newspapers.

MR. KREISBERG: That is right. The 1962 decree was limited to magazines. It was our in-

terpretation.

MR. FARRELL: That's not so.

MR. KREISBERG: The legal interpretation.

MR. FARRELL: Let me put this on the record.

Q Mr. Garfinkle, isn't it a fact --

MR. KREISBERG: I object to the form of the question.

Don't answer that, isn't it a fact.

MR. KLEIN: Put the question, but leave out the words "isn't it a fact."

Q In 1962, you received a cease and desist order by stipulation with the United States Government in an action they brought against Ancorp; is that correct?

A For magainzes only.

Q Isn't it a fact --

MR. FARRELL: Excuse me.

Strike that.

Q Did the Daily News pay you $26,000 a year in 1962?

A That is right.

Q Is the Daily News in the magazine business?

A No,sir.

Q The New York Times paid you $30,000 in

1962.

A I can't remember what they paid.

Q How much did they pay you?

A Probably the same as the News paid.

Q And are they in the magazine business?

A No, sir.

Q And did they continue to make these payments until 1969?

A Until 1969. They always paid. It was always going back for the, the newspaper, for the pink tickets that we used to do for them.

Q And that total over a period of seven years amounted to approximately $150,000 that you received?

A I don't know what the figures are.

Q Now, the New York Times and the Daily News do not distribute magazines.

A That is right.

Q Yet you collected this money during that period.

A That is correct.

That was a policy way before I got into the company.

Q After the cease and desist order.

MR. KREISBERG: After 1962.

Q After 1962.

A Until 1969.

Q You continued to collect that money until 1969.

A That is right.

Q There came a time that the Village Voice wanted to distribute with the American News Company; is that correct?

A I don't know.

Q Are you familiar with a series of articles that appeared about you and your company in the Wall Street Journal dated July 3rd, August the 6th and October 27th?

MR. KREISBERG: What year?

Q 1969.

A I don't remember.

Yes, there's some articles.

I don't know which articles he's talking about.

Q In an article published in the Wall Street Journal on July 3, 1969, I read the following:

With the take over of the American News Company in 1955, Mr. Garfinkle combined enterprises put in a position to exert pressure on publishers

sale at the Union News Company; is that correct?

A That's incorrect.

Q All right.

MR. KREISBERG: Incidentally, they lost that law suit, you know.

Q Is Willie Levine your brother-in-law?

A That is right.

Q Is he in the distributing business?

A He's not in the distributing business.

Q What business is he in?

A What business is he in?

Q Yes.

A He owns a newsstand.

And he is also Vice-President --

Q Of Greater Boston?

A Of International Hotel Systems.

Q Is he an officer of Greater Boston?

A Greater Boston?

Q Yes.

A No,sir.

Q Is he an officer of Manhattan News?

A No,sir.

Q He owns a newsstand?

A Many, many years out in Queens someplace, I

A Before they switched to me.

Q In 1969 or '70, Manhattan News lost the distribution of T.V. Guide to Metropolitan News?

A That is right.

Q During that period, it was not sold by Union News.

A And before that they did not sell it.

Q I didn't ask you that. Now I am going to ask you.

Now, before 1969, did Union News carry T.V. Guide?

A Did not.

Q Never?

A I told you, they never handled T.V. Guide.

Q It only handled T.V. Guide when Manhattan News took it on.

A Did not handle it. Union News never took it on before --

Q Mr. Garfinkle, you --

A You get yourself mixed up, not me.

Q Listen to me carefully.

Union News did not carry T.V. Guide up until 1969 ever. Is that what you said?

A That is right.

recall.

Q And never since then?

A Never since then.

Q Do you talk to Mr. Underwood on the telephone?

A I talk -- a few times I spoke to Mr. Underwood to meet him at publishing parties where, pertaining to the industry, the business.

Q What is the last time you had such a conversation with him?

A Oh, I would say about three years or four years ago.

Q That was the last time you spoke to him?

A That was the last time.

Q Do you know a Pat Buchanan?

A If I know a Pat Buchanan?

Q Right.

A Yes; I met him once.

Q Do you know what his business is?

A What I understand, he's with the President of the United States.

Q Has he been to your home at Marblehead?

A Never has been to my home.

Q Do you have any business to do with him?

A That is correct.

Q And 1972?

A That is right.

Q To the best of your knowledge, newspapers when delivered to these stands were never put under thecounter?

A Never.

Unless it was inconvenient that they didn't have no room on the newsstands. Because some of these stands are seven feet, fifteen feet, ten feet, and there's so much room in the front for the sale of newspapers. And if they didn't have any room to display all the newspapers they had, they had to make it convenient for themselves, and they put it in the position best for themselves.

Q And they therefore would put it under the counter?

A I don't know where they put it. They might have put it in back of their heads; I don't know where they put it.

Q If that situation arose, such as you described, the return slip then would say five papers delivered or draw, five papers returned; is that correct?

A If they had five returns, they could have had four returns or three returns.

Q That isn't what I am asking you.

A You are asking me, you insist on five papers or five returns; they may have had four returns.

Q Mr. Garfinkle, you stated that if circumstances prevented them from putting papers on the newsstand, if they had no room for them --

A That is right.

Q -- and they might put it under the counter because they had no room.

A Maybe they put it on the top of the counter or on the side; I don't know.

Q And if they didn't sell any, they would then return them?

A That is correct.

Q And that could happen at every Union newsstand.

MR. KREISBERG: He didn't say that.

Q I am saying, that could happen? I didn't say it did happen. If they had --

A My people cannot control the sale of the paper. I am sure if anybody asks for a paper, and they had it, they would gladly give it to me.

Q So in order for anybody to have to get the paper they would have to ask for it.

A In certain places where they had no room they had to ask for the paper.

As I said before, that they had room for so much for newspaper sales, so much for magazines, so much for candy.

Q Now, in the year 1969, 1970 and 1971 -- those are the years you are discussing; right?

A I assume what you said.

Q -- how many newspapers were published in the City of New York during that period?

A I don't know. I can't tell you. There must be, God knows, 50, 60 different types, Spanish papers, French papers, English papers; I don't know how many papers are published.

Q I am talking about major daily newspapers. English.

A Major daily newspapers?

Q Right.

A You only got three in New York City.

Q Right.

And that's what you were handling at the Union newsstands.

A Abe Goldberg you said.

Q Archie Gordon. Not Charlie Gordon.

A No.

Q Never met him?

A Never met him.

Q Do you know a company called Gregg News?

A No, sir.

Q Do you know anybody that worked in your company at Ancorp named Kramer?

A I don't know.

Q Is that name familiar to you?

A A few Kramers I know.

Q At Ancorp?

A No.

Q At the last examination you mentioned a magazine or a periodical called Screw.

A That is right.

Q And you stated that you would not carry such a publication.

A Pardon?

Q You stated that you would not distribute such a publication or carry it on the Union newsstands.

A Will you please forget, you will get me confused by saying distribute or carry on the Union News.

without making decision coming up to me.

Q And you make the decisions?

A I don't make no decisions, unless a book like Screw. Unless a thing like Screw.

Q In Screw you made the judgment.

A I made the judgment.

Q Do you know Sal Giglio?

A No.

Q Do you know a John Giglio?

A No.

Q Do you have a chauffeur?

A Who could afford one?

Q You don't have a chauffeur?

A No. We have a boy picks me up now, and my manager, with a car.

Q Did you have a chauffeur in '71, '70, '69?

A '70, and '71, I had a chauffeur.

Q What was that chauffeur's name?

A Bruce.

Q To the best of your knowledge, did you state you don't know the executives of the Daily News on a social basis? The President, the Vice-President, and so on.

A Never.

Q Would you know if they own any stock in your company?

A I don't know if he owns stock.

MR. KLEIN: The answer is no?

THE WITNESS: No.

Q When the subsidies were paid to Ancorp, the ones we spoke about in the government action from 1962 to 1969, the payments from the New York News and the New York Times, was that paid in cash? Were those payments made in cash?

A Absolutely not.

Q Were they made by check?

A Absolutely. Whatever it is done in that company is done right on the top of the table through checks and all that business.

Q Were those payments which were reported in the official records as being approximately $25,000 from each company --

A Absolutely.

Q -- the total amount of payments taken from the News or the Times?

Was that all the money that the New York Times and the Daily News paid Ancorp?

A Yes.

Q No other funds besides that?

A Absolutely not.

Q At the time you first bought -- at the time you became President of American News Company by virtue of your increasing your holdings to roughly eight, nine, ten percent. did Roy Cohn represent you in that deal?

A He did, at thattime.

Q Does Roy Cohn represent you now?

A No.

Q Or American News, or your son?

A What he's doing now, I don't know.

MR. KREISBERG: He doesn't represent him.

Q Or American News?

A I don't know. As far as that. But as far as I am concerned, if you want to put it down --

Q Did you ever have a conversation with Roy Coh concerning the Daily Mirror in 1971?

A No.

I do have -- all right.

I answer the question no.

Q Did Roy Coh ever tell you to make an appointment with you to discuss the Daily Mirror?

A No.

Q In 1970?

A He did it through --

MR. KREISBERG: No.

A No.

Q Did his partner call you for an appointment to discuss the Daily Mirror?

A No.

Q Did Roy Cohn come to your office to discuss the Daily Mirror?

A He did not.

Q Never discussed the Daily Mirror with you?

A He send somebody else.

Q Who did he send?

A Joe Adams. J.E. Adams.

Q Did Joe E. Adams ever call you to discuss the Daily Mirror?

A That is correct.

Q And he came to your office?

A No. He was on the phone.

Q What did you say and what did he say?

A I said, Joe, I would like to do, and help you, but it's the policy of the company that if anything

that's costing us money, in laying out the different work that we have to do, it's a cost of losing money with the company, there's no demand for the paper, we cannot handle it.

That was after we did handle the Mirror for a while.

Q Did Cindy Adams call you?

A His wife?

Q No.

A Not Cindy; Joe did.

Q How many times did you and he talk about the Daily Mirror?

A Called me once.

Q Did anybody else call you concerning this problem?

A Oh, I had two, maybe three or four different people call me.

Q Who were they?

A I can't recall right now.

Q I will help you recall them.

A I hope.

Q Did you say that forty people called you?

MR. KREISBERG: No.

Q I am asking you a question.

A That is right.

Q You say you know her.

A I sure - I know her, and I know her husband, Irving Mansfield, for many, many years.

Q And neither have entered into a dialogue with you orally or by way of the telephone to ask you why the Union news would not sell the Daily Mirror?

A Never. They did not never said it.

Q Did Anthony DiFalco ever call on you?

A No, sir.

Q Never.

A Anthony? I don't know. I speak to him on other things, but not on that matter.

Q He never called or spoke to you about why the Union News was not selling the Daily Mirror?

A No.

Q The answer is no, never; is that right?

A Never.

Q Do you know Sylvia Filler?

A I sure do.

Q How many years do you know her?

A Oh, God knows, maybe 25 years, or 20 years.

Q Was she a guest at your home at Marblehead?

A She was.

I don't remember.

Q Did you drive up in a car with Sylvia Filler and Willie Levine?

A To Marblehead?

Q Yes.

A If I ever drove back, I drove back with them. But to go up to Marblehead, I go on my own schedule.

Q So that you never drove up in their car?

A No, sir.

Q But did you drive back with them?

A Probably.

Q At the week-ends that Miss Filler spent at your home in which you state two or three week-ends; is that correct?

A At the most.

Q At the most.

Were there other guests at the house?

A Always ten or twelve guests.

Q Was there ever a conversation concerning the Daily Mirror at those times?

A She did at one time. And I explained her the reasons why we cannot handle the paper, that there's no demand for, and the cost for handling a newspaper

A No, sir.

Q -- advertising the return of the Daily Mirror?

A Did not.

Q Did you ever see a copy of the Daily Mirror?

A I did.

Q Did you look at it?

A I sure did.

Q Did you know the writers it had?

A I know some of your writers he had.

Q Were there many of the writers of the old Daily Mirror?

A There might have been a few from the old Daily Mirror. And I know them on a first name basis.

Q Would you consider them very important writers?

A I don't know what your opinion considered important writers, but I know what my opinion is.

Q I am asking you for yours.

A I can't answer that question.

Q Do you know Walter Winchell?

A I knew Walter Winchell.

Q Did you know Bob Considine's column?

A I know Bob Considine.

Q Did you know Victor Riesel's column?

A Victor Riesel, all these people that you mention, I knew personally. I knew these people personally.

Q And did you know that they were writing for the Daily Mirror?

A That is correct.

Q When Gregg News or Archie Gordon was distributing, was -- do you know whether he made arrangements with Mr. McCullough to distribute, or, rather, to put the Daily Mirror on sale on the Union newsstands during the first and second weeks of its publication?

MR. KREISBERG: Who made arrangements? I am confused.

Q Archie Gordon and Mr. McCullough.

A I don't know Archie Gordon. I don't know the Gregg News Company. And I don't know of any arrangements that was made with Mr. McCullough.

Q Do you know that the American News Company through its newsstands, Union News Company, did in fact put on sale the Daily Mirror, or did handle the Daily Mirror?

A That is correct. They did handle.

Q For how many weeks did they handle it?

A I don't know.

Q And you do not know who negotiated those arrangements?

A I absolutely don't know who negotiated these. It's out of my jurisdiction.

Q When did you first learn that the American News was not handling the Mirror?

A I don't know how long after, when I, they came out, but when I did find out, he says, the Mirror is not being handled, they show me that the figures, they showed the figures how much the company was losing money by handling the paper.

Q That was after a few days.

A Not after, it went by months.

Q Did you handle the Daily Mirror for months?

A Sure did. I think it was a couple of months, I don't know.

Q Who told you that it was losing money, Mr. McCullough?

A Downstairs we have an auditing department. This is not a two man company, it's 6800 people employed in this company. You have different departments. The bookkeeping, the auditors, and all. They analyze paper by paper.

Q And you say after a few months your figures with your auditors and men in your business at your firm, The American News Company, decided that this, that the sale of this newspaper on the Union News was not profitable?

A That is correct.

Q Would you consider yourself an expert in the distribution of products, or, rather, in the sale of products on newsstands, and having been in this business most of your life?

A I am not interested in any --

Q I asked you a question.

Would you consider yourself an expert?

A No, I am not an expert.

Q Would you call yourself a specialist?

A Not a specialist either. I am not a promotion man.

Q But you did know that --

A Dollars and cents I know, profit.

Q But you did know that the old Daily Mirror had a very large circulation throughout the metropolitan area, and in many other places, you did know that?

A I did know that. That is right.

Q And that you made a great deal of money with the Hearst organization distributing that newspaper?

A That is correct.

MR. KLEIN: Selling.

Q Selling.

A Selling it.

Q And you do know that the Daily Mirror that was being produced, the new Daily Mirror, had its logo front page and contents very much like the old Daily Mirror.

A That doesn't mean that what the old one was selling and what the new one came out, what the paper was, that I got to be an expert to know that there would be x readers that are going to pick up the old circulation. I can only go by dollars and cents.

Q Answer the question yes or no.

A No. I mean, it's ridiculous, the whole thing.

Q Yet, after a few months you state that you and your company decided that this could not be like the old Daily Mirror?

A I didn't say that it's like the old Daily Mirror, I have no --

Q In sales?

A What Daily News?

Q How much money did you net a year from the Daily News Company --

A I don't know. But we sold thousands and thousands of papers.

Q Did you make a million dollars a year from them?

A I don't know. I don't know if we made $50 or $100. Million dollars?

Q Gross volume income, can you estimate that?

A No, sir. Won't run to that, I doubt it very much.

Q You were the titular head of a large company?

A That is right.

Q And you ran that company. Correct?

A Run it to the point of the corporate structure of eight divisions.

Q And you knew every darned thing that went on in that company?

A Absolutely wrong. I knew everything that was --

Q Everything.

A No. No.

Q As the head of that company, did you know how

much money in total volume the Daily News and Sunday News was doing with you?

A Do not.

Q Did you have figures to determine whether the carrying those newspapers was a profitable venture?

A Absolutely not.

Q But you did have figures to determine that carrying the Mirror was not a profitable venture.

A The Mirror?

Q Yes.

A Or any paper that would handle, be handled by their various divisions would have the profit and losses or anything we handled.

Q You only were interested in those that had losses?

A The losses at that, I told you, was in the various divisions that they handled the paper.

MR. FARRELL: Off the record.

(Discussion off the record)

(Whereupon, at 4:20 P.M. the deposition was adjourned without date.)

Subscribed and sworn to before me
this day of ,1973.

A The years I was there. 1955 until the company went into a Chapter 11.

Q It covered the entire period during which the Daily Mirror was up for sale?

A I don't know nothing about it.

I don't know anything about sales or changing of titles or names, what goes on with individual publications.

Q You knew nothing about the sale on the newsstands of Union News of the Daily Mirror between the years 1970 and 1972?

A No.

Q You knew nothing about that?

A No. Absolutely not.

Q With regard to the sale of the Daily Mirror on individual newsstands, you knew nothing about that either?

A Absolutely not.

Q Did you by any chance learn indirectly from any other source, like the Daily News executives, that there was such a publication as the Daily Mirror being sold?

A I don't discuss my business with anybody.

Q So that the answer to that question is no?

visors during those mentioned years?

A Never did for the simple reason there are other publications that come on the stand and off the stand if the sale was not there for economic reasons.

Q Try to confine yourself to the question I am putting to you.

MR. KREISBERG: He is. He has to answer the question that you give him.

MR. KLEIN: I move to strike out that portion of the answer after the word "never" and the two other words following.

Please repeat the question.

(Whereupon the pending question was read by the reporter.)

Q Answer, please.

A No.

Q If the Daily Mirror was on the Union News stands the first week of its publication in the year '70, would your supervisors, finding a new publication on the stands of Union News, watch the sale of that paper closely, yes or no?

A If any paper that came out the first week or second week was put automatically on the newsstand, if they watched it closely or not, I don't know nothing

about it. It is not my duties to know.

We have, as I stated before, many publications that go on the stands and go off the stands for economic reasons.

MR. KLEIN: Move to strike as not responsive.

MR. KREISBERG: It is responsive. He answered the question.

MR. KLEIN: Off the record.

(Discussion off the record.)

MR. KREISBERG: Move to strike the second part as unresponsive. You got the answer in the first part.

Q At the end of the second week of its publication did you find out from your supervisors or get any report as to the volume of sales or the reception of the newspaper by the public?

A No.

Q Do you know how long the Daily Mirror continued to sell on the Union News stands?

A I did not know anything.

Q That goes for the entire period of its existence?

A For everything that the Union News handles.

Q These supervisors were under your control,

else, I ask you now whether, as the chief operating officer of the Union News business as a whole, you found within the first two weeks or three weeks that the supervisors were finding the circulation on the Union News stands of the Daily Mirror unprofitable?

MR. KREISBERG: If you can answer the question. I don't understand what he said.

A I don't understand.

Q Within the first three weeks of the publication of the Daily Mirror did you have from your supervisors any reports of the economics of the Daily Mirror on your newstands?

A I did not.

Q Do you remember when, for the first time at all, the supervisors of the Union News stands reported to anyone in your organization that the sale of the Daily Mirror was becoming uneconomic?

A I never got that.

Q Do you know, as a matter of fact, that any such reports of the uneconomic nature of the Daily Mirror as a saleable item on the Union News stands had been reported by the supervisors?

MR. KREISBERG: Reported by whom?

MR. KLEIN: To the Union News operation.

Q Union News.

A Of all divisions?

Q Including the Union News.

A Yes.

Q You never had occasion to pass upon any reports made with respect to the economics of the Daily Mirror in its sales on the Union News stands?

A That is right.

Q The answer is yes, that you never did?

A Never did.

MR. KREISBERG: The way to phrase it, he doesn't know how to answer it.

MR. KLEIN: He seemed to know. He answered.

Q You were asked at the last session, Mr. Garfinkle, to let us have a record of the volume of sales, gross sales, of the Daily News for the years of 1965, to date, with the Union News.

Have you such records?

MR. KREISBERG: Let me make a statement. I made it before and repeat it again.

We have no control over the records of Ancorp and all those corporations. I suggest that you get a corporate officer and request of him the documents you requested.

Union News enjoyed during the years in question?

BY MR. KLEIN:

Q Mr. Garfinkle, at no time did you ever complain within the organization of the American News or the Union News that the Daily Mirror was an undesirable publication?

A Never did.

Q For sale on its newsstand?

A Never did.

Q So far as you are concerned, as your function as an officer goes, it could have continued throughout that period from 1969 to 1972 and thereafter?

A That is right.

Q During all that time, from 1969 to 1972, you never made any inquiry as to the operations of the Mirror, its cost of operation, its profitability as a newspaper organization?

A At one time I did.

Q What time was that?

A Sometime in, I don't know what year it was. Probably in '70, '71 or '72.

Q Of whom did you make that inquiry?

MR. KREISBERG: Let him finish.

MR. KLEIN: He concluded.

MR. KREISBERG: No, he wasn't.

A With people who were friends of mine who interceded for the Mirror to ask me, could they possibly have the papers remain on the newsstand.

Q Tell us who interceded and what you said to him and they said to you.

A Who they were? I can mention three.

One was a Joey Adams, one was a Sylvia Filler, and one was Julius Krieger.

Q Tell us what each said to you and what you said to them.

A They asked me, could anything be done to see that the Mirror remains on the stand.

I said, it is a policy of the company for any newspaper we handle in the United States that if it was uneconomic to handle, the company cannot lose money. It is not a charity organization.

Q What did they say?

A What they said was, if that is the policy, it cannot be anything different for anybody else.

As I explained, if the company did it for one paper they would have to do it for a hundred different publications. It is as simple as that.

Q Did you inquire, with respect to anybody else

in the organization, as to whether the newspaper, the Daily Mirror, was uneconomic?

A That is how I got into it. I asked them, what happened here? They said to me, "We are losing money by handling the Mirror."

Q When was that?

A I don't know the date. I have a million things to do besides going into this.

Q Was it 1970?

A I don't remember.

Q Was it in 1971?

A I don't remember.

Q Was it in 1972?

A I don't remember.

Q Was it after the newspaper discontinued its existence?

A I do not remember that.

Q Do you remember where those conversations took place with these three people you named?

A Two on the telephone, and one at my home in Marblehead.

Q In person at your home?

A Yes.

Q Do you remember who called you on the telephone?

MR. KREISBERG: He answered that already.

A I did not.

Q During all that time, you never inquired of them as to what the operations of Manhattan News were?

MR. KREISBERG: You will ask that the last time. He can answer it once more.

MR. FARRELL: He didn't answer the last question.

MR. KREISBERG: Read the last question.

(Whereupon the last question was read by the reporter.)

Q Answer the question.

A No.

Q I want to ask you this:

Did the Manhattan News Company, to your knowledge, operate during the years 1969, 1970, '71 and '72 in New York City?

A They did.

Q Did they distribute magazines outside of New York City as well as New York City?

A Just in Manhattan. This is the same question you asked me the last time I was here.

Q Did they distribute magazines to the same

newsstands, whether it be Union News or otherwise, that distributed the Daily Mirror, to your knowledge?

A To my knowledge, wherever anybody sold magazines, that is where they distributed them.

MR. FARRELL: He didn't answer the question.

MR. KREISBERG: He doesn't know.

MR. KLEIN: He didn't say he doesn't know.

MR. FARRELL: Read the question back and let him answer.

(Whereupon the last question and answer was read back by the reporter.)

Q I ask you now, Mr. Garfinkle, whether to your knowledge, while the Daily Mirror was being distributed, did the Manhattan News also distribute magazines?

MR. KREISBERG: I object to the question. Nothing has been established whether Mr. Garfinkle knows where the Daily Mirror was distributed,

Q To your knowledge, if you haven't the knowledge, say so. To your knowledge was Manhattan News distributing magazines to the same stands in New York City, whether it be Union News or otherwise, at which the Daily News was selling?

A I don't know.

Q Were you familiar with the old New York Mirror

about?

Q Manhattan.

A How would I hear anything like that? They didn't handle the Mirror.

Q Didn't you say you traveled all over the country with inspectors of news business?

A I don't go to inspect them. We have restaurants and other types of business.

Q I am asking you, did you hear about it?

A Never did.

Q You never read any of the articles in the Wall Street Journal?

MR. KREISBERG: What articles?

Q The article of July 3, '69 and those that followed?

MR. KREISBERG: Did he what? Did he read them?

MR. KLEIN: He said he never heard of any such influence being used.

THE WITNESS: That is correct.

MR. KLEIN: I asked him whether he read these articles in the Wall Street Journal or in the magazine called More.

THE WITNESS: No.

example, refuse to let him have it unless he does the bidding of the driver?

A No.

Q If he does that, what you are saying is that only the law stops the driver from doing that?

MR. KREISBERG: No, he didn't say that.

A I didn't say that. The driver has only one thing. If he comes to a dealer, he will not deliver him if he owes the company money.

It might be for two, three or four weeks.

Q You are repeating that?

MR. KREISBERG: He told you something and you don't understand what he said.

MR. KLEIN: He said the law forbids something.

MR. KREISBERG: You weren't listening because you were busy talking to him.

MR. KLEIN: He said he can go over the counter to get it. That is not an answer.

MR. KREISBERG: That was the answer.

Q If the Manhattan News driver refuses to deliver a particular newsstand, say at 125th Street and Broadway, 20 copies, let's say, of Life magazine, let's say, may that newsstand dealer then go down to the distributing office of the distributor and demand that those 20 copies

be sold to him?

A That is right.

Q That office is where?

A 42nd Street.

MR. KREISBERG: Does he have to pay cash at that time?

THE WITNESS: He has to pay cash.

A (continuing) To answer your question --

Q I didn't ask you a question yet.

I am asking you now, will the distributor at the home office of the distributor, having been told that the driver refused to give it to him, at once give him the 20 copies he wants?

A Anybody who comes in that office.

I am going to repeat this.

Q At wholesale or retail prices?

A Wholesale prices.

Q Do you say he does it because he is compelled to by law?

A Because he will sell it to anybody. The publishers have representatives to see that this man gives it to them.

Q As an expert in the field, would you say that a newsstand at 125th Street, operating far from the home

MR. KREISBERG: Except for one situation. When they did pay for it.

MR. KLEIN: That is what he said as a matter of theory. Necessarily not true.

He repeatedly said, "What do I know? I am traveling all over the country."

THE WITNESS: You asked my opinion. You don't like my opinion?

MR. FARRELL: I like your opinion. Ask him the question.

MR. KREISBERG: He gave you the answer.

Q Whatever the reason may be for which a driver might refuse, you say that the newsstand dealer is at liberty then to get the 20 copies he is asking for, by going to the home office distributor?

A That is right. And he goes to another distributor. He can be nearer to the Bronx.

Q In your opinion, such a refusal by a driver, if it happened, would tend to disrupt the regular normal business of the newsdealer?

A No, sir.

Q It would not?

A Because the publisher himself goes over to where they made the deliveries, goes over 900 sheets.

Q But you really can't say now that it never happened, as a matter of fact, can you, yes or no?

A I am not there with an everyday operation.

Q Mr. Garfinkle, when you were told to divest your interest in Manhattan News, did you tell Percy O'Connell or the other gentlemen who made the command of you, what you had done with respect to divestment?

A They never asked me.

Q Did you tell them at any time, whether they asked you or not, that you turned the business over to your wife and children?

A Never asked me.

Q Did you ever tell them voluntarily?

A No, sir.

Q To this day, does Ancorp know that your family is in control?

A They have known it now for 18, 19 years.

Q Without asking you?

A They all know it. It is an open secret.

Q When they told you to divest yourself, and you say that was an order on you, wasn't it --

A It was not an order.

Q Was it a request?

A My attorney at the time, Ed Weisel, of Simpson,

Q Who?

A Mr. Nichols. Mr. Polio.

Q Who is Mr. Polio?

A Assistant to Mr. Nichols.

Q Did your wife and children have anything to say about that?

A No. Not as far as that is concerned.

Q They simply hold stock?

A Yes.

Q And otherwise have nothing to say. Is that right?

A That is correct.

Q I am going to ask you directly, Mr. Garfinkle, whether the Daily Mirror at any time, whether to your knowledge or to the knowledge of your supervisors, at any time became the subject of its being eliminated from the Union News stands because the Daily News objected?

A No, sir.

Q You learned, didn't you, that the Daily News had some kind of conflict or contest at sometime with the publishers of the second Mirror?

A No, sir. Never heard this.

Q Did there come a time when you learned or came

that you call tricks of the trade --

A There are no tricks in this business.

Q Prior to this business there never were any?

A No. Never.

MR. KREISBERG: I object to the question. I don't know what "tricks" are.

MR. KLEIN: If you are going to ask me to define what the tricks of the trade are --

MR. KREISBERG: He answered the question. I still have an objection.

Q You remember, you were asked about a chauffeur you had, Joe Gigilio, and there was another one you referred to as a "black bastard," or something --

A I didn't say that.

Q Do you say now that this Bruce, this black man, did not work for you?

A He did work for me.

Q Is he with you any longer?

A No.

Q Was Joe Gigilio or this man in any ways connected with any outside organizations that used force?

A No.

Q None at all?

Q I didn't ask you that.

MR. KREISBERG: He is telling you under what circumstances --

MR. KLEIN: I didn't ask you that.

I didn't ask him now.

Q Do you feel you have a right to say this paper I will sell or this publication I will sell and this I won't?

A There is probably 1500 newspapers Union News Company sells between New York and San Francisco.

Q That is not an answer to my question.

A Each local area handles --

Q Do you say each newsstand of Union News has a right which it exercises to determine what it shall sell and what it shall not sell?

A If they are handling it at a loss they will not sell it. I cannot give you any other answer.

MR. KREISBERG: He answered the question.

MR. KLEIN: He didn't.

MR. KREISBERG: You are not the judge.

Q Do you say that as the operator of the Union News stands, or any newsstand dealer in the city, has a right to decide for himself what he shall sell by way of publications, yes or no?

A No. He has no right. It is up to an individual newsdealer to handle what he wants to handle.

_____

Subscribed and sworn to before me

This ____ day of _____, 1973.

_____

ORAL TESTIMONY (EXAMINATION BEFORE TRIAL) *

April 7th,1975

of

ARCHIE GORDON

An employee of the Defendant New York News Inc.,

* Handwritten inserts to be disregarded.

A Yes. I just asked you a question.

Q Who? Who do you know?

A Everybody that's there. Know both of them?

Q Give me the names.

A That's ridiculous. For them?

Q For I mean, among the executives. I don't mean the fellows who work in the circulation department.

Who do you know there?

A No one, there.

Q You know no one in the circulation department?

A You said executives. I don't know any executives.

Q You don't know any executives?

A No.

MR. FARRELL: How many years has he worked here?

MR. GERAGHTY: Forty-three.

Q Did you ever know any executives in the circulation department?

A Yes.

Q Who did you know?

A Max Annenberg and his son, Ivan.

Q Do you know Moe Annenberg?

A I had nothing to do with the News.

ORAL TESTIMONY (EXAMINATION BEFORE TRIAL) *

April 15th,1975

of

WILLIE LEVINE

An employee of Defendant Ancorp,Inc,and
an untitled executive of said corporation.

* Handwritten inserts to be disregarded.

WILLIAM LEVINE, appearing as a witness, having first been duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY MR. FARRELL:

Q What is your name?

A William Levine.

Q What is your address?

A 17-852 115th Street, Bayside, New York.

Q Mr. Levine, are you currently employed?

A Yes.

Q Who do you work for?

A Ancorp National Services.

Q Are you a member of the company, are you an officer of the corporation?

A No.

Q Have you ever been an officer of the corporation?

A No.

Q Do you have a title?

A No.

Q What are your duties?

A Executive position.

Q What does that mean?

A Wherever I am needed.

Q When were you first associated with Manhattan News?

A About 10, 15 years prior to '74.

Q What were your duties at Manhattan News?

A I was an executive.

Q That is a title. I asked you what your duties were.

A Operate the business.

Q What did you do to operate the business?

A What is generally -- what type of business it is, you mean?

Q What was your function in operating your business at Manhattan News Company?

A It was to operate the business on the day-to-day business.

Q Tell us what you did. You came in in the morning, took your coat off, and what did you do?

A Just took care of the business. I mean, to explain this business would be a long, in-depth -- it would have to go --

Q What did you do and what were your functions while you were employed by the Manhattan News Company?

MR. SHUMAN: Mr. Farrell, I am sorry to interrupt, but Manhattan News is not a party to this action and

you called him down as an officer of Ancorp, so if you would like to ask him --

MR. FARRELL: I am asking his relationship with Henry Garfinkle, who is a defendant in this action.

MR. SHUMAN: You are asking about Manhattan News.

MR. FARRELL: That is right, and he has told me that Manhattan News was not owned by Henry Garfinkle.

MR. SHUMAN: He has told you that he does not know. You have made an assumption.

Q Does Henry Garfinkle own the controlling stock in Manhattan News?

A I don't know.

Q Does Myron Garfinkle?

A I don't know.

Q Was Myron Garfinkle an officer of Manhattan News during your employ?

A That I don't remember.

Q When you were at Manhattan News, did Henry Garfinkle visit you at Manhattan News?

A Never.

Q Never ever visited you?

A Never ever.

Q During any business day from nine to five, Henry Garfinkle never visited you?

A Never.

Q Did he ever visit Manhattan News?

A Never.

Q To the best of your recollection, Henry Garfinkle never stopped inside the door of Manhattan News Company?

A That's right.

Q From five to midnight or the other swing of the clock, from five to nine in the morning, to the best of your knowledge, did Henry Garfinkle ever stop into the business?

A No.

Q Never?

A No.

Q Is it your testimony that, to the best of your knowledge, Henry Garfinkle had nothing ever to do with Manhattan News Company?

A When I was there?

Q Yes.

A That's right.

Q For the past ten years?

Q Were you Henry Garfinkle's chauffeur?

A Chauffeur?

Q Yes.

A No.

Q Did you ever act as his chauffeur?

A Act?

Q Yes.

A No.

Q Do you know his chauffeur?

A Do I know his chauffeur?

Q Yes.

A He had many chauffeurs throughout the year.

Q Tell us the number of chauffeurs he had, the names?

A I don't remember the names.

Q Any names?

A Johnny.

Q Johnny who?

A Johnny -- I don't remember his second name.

Q Johnny who?

A I don't know.

Q Was his name Gigglio?

A It might be.

Q Do you know a Johnny Gigglio?

A They have two children.

Q Adopted?

A Does that matter in this case?

Q Yes.

A Adopted.

Q Both of them?

A Yes.

Q One of them is Myron?

A That's right.

Q When is the last time you saw Myron Garfinkle?

A Two hours ago.

Q Did you discuss this case with him?

A No.

Q Did you discuss this case with Mr. Shuman?

A No.

Q Have you read any minutes, transcribed minutes, of any examinations in this case?

A No.

Q You came here without having discussed this case with anybody?

A Just to the fact that he told me I have to come down here.

Q And no further discussion?

A No.

a week?

A You want to break it up to the last two years? I haven't had dinner with him at all.

Q You are not talking with him?

A Right.

Q Prior to the two years, how many times did you meet with him?

A At least once a week.

Q Did you meet at the Hampshire House?

A Not necessarily. I met at his own house.

Q Didn't you discuss this case with him?

A Never. He had mentioned to me that there is a case between the Mirror and the News and him.

Q And that is all?

A That he's in good company with the Daily News, and that's it.

Q You never discussed the case.

A No. In a joking way, he mentioned it.

Q You never discussed this matter?

A Not the details.

Q At Marblehead?

A Never discussed the details of the case.

Q In the restaurant?

A Never discussed the details.

Q Other than the general fact that you knew there was a lawsuit pending for a huge sum of money which Henry told you about, you never discussed any part of the case?

A No.

Q People concerned with it, individuals?

A No.

Q Was the name Bob Farrell ever mentioned to you?

A The fact that he knew the publisher of the Mirror.

Q Who mentioned it?

A In the trade.

Q No one else?

A No.

Q Was the name Bob Farrell ever mentioned to you in an automobile ride to the airport?

A By whom?

Q With you and Henry?

A No.

Q Never mentioned by anybody?

A No.

Q Did you ever discuss this lawsuit with Ann Garfinkle?

A No.

Garfinkle?

A Never.

Q Any aspects of the case?

A No.

Q Even to the fact that there was a case pending?

A I just told him I have to go down to a deposition.

Q Where did you go after you discussed this with Myron?

A I didn't discuss it.

Q Where did you go?

A I went to lunch.

Q With whom?

A We went to lunch at the office.

Q Who is "we"?

A The executives of Ancorp.

Q Who is "we"?

A The people?

Q Yes.

A Mr. McCollough, Jeffrey Shuman was there, Jerry Greenberg was there, Stanley Simon was there, Bill Townsend was there.

Q Was this case discussed at lunch?

A No.

Q Where did you see him?

A American News.

Q Was there any purpose to that meeting, was there any purpose in your meeting Roy Cohen at the American News Company?

A American News Company business.

Q Was this case discussed?

A No, sir.

Q Did you ever discuss this case with Roy Cohen?

A No, sir.

Q Never?

A Never.

Q When I refer to American News Company, I am referring to the subsidiaries of Ancorp --

A Yes.

Q Have you ever discussed this case with Roy Cohen or anyone else? I am referring to the four defendants, which are Ancorp, American News, Union News and Henry Garfinkle.

A Right.

Q I am examining you with regard to those people.

A Okay.

Q You never discussed this case with Roy Cohen?

A No, sir.

Q Did Roy Cohen give you any instructions concerning the way to answer questions in your EBT this morning?

A No.

Q Does Roy Cohen know that you are being examined here this morning?

A Not through me.

Q Not through you?

A No.

Q How often, in the past five years, have you visited Roy Cohen at his home and office?

A Very often.

Q When was the first time you visited his home and office?

A The last five years?

Q Yes.

A Five years ago.

Q You say about five years ago?

A You said when is the last time in the last five years.

Q I said the first time that you went. You say you have been going there within the past five years?

A No, I said I have gone for 15 years.

Q You have been going to Roy Cohen's home and office for 15 years?

A Yes.

Q When was the last time you were at his home and office?

A Last week.

Q How often in those 15 years were your visits to Roy Cohen?

A Whenever an occasion would come.

Q So that in visiting Roy Cohen in the period of 15 years and, more recently, a few weeks ago, you never discussed this case with him?

A No.

Q This very case?

A No.

Q You say you never discussed this case at all with Roy Cohen?

A No.

Q Was there ever an occasion that he discussed it with you?

A No.

Q Were you ever asked to intercede in this case with Henry Garfinkle by Roy Cohen?

A In this case?

Q Did you know that he and David Rosen were having problems?

MR. SHUMAN: He does not have to answer that.

MR. FARRELL: He said he never discussed it. I am asking him whether Henry ever discussed his problems.

MR. SHUMAN: I am advising my client not to answer that.

Q Will you again tell me, or I am asking you again, what your duties in Manhattan News Company are?

A It's hard to explain. It's just to run the company.

MR. SHUMAN: First of all, Manhattan News is not a party to this and I would like to know how you can possibly ask him questions about this.

MR. FARRELL: This is an action in which we allege conspiracy to restrain trade. Henry Garfinkle and Myron Garfinkle are interwoven between American News and Ancorp and Manhattan News Company, which gave them great access to news dealers. The names I am mentioning are people involved in the trade of news dealers with access to these people. We are seeking information as to what access, what relationship, how often they met,

A Yes.

Q Do you know that Henry has a piece of it, as they say?

A A piece?

Q A part of a hotel.

A A partnership you mean?

Q Right.

A It's a public company.

Q And he owns a good deal of stock in that company?

A Yes.

Q Where is it located, Miami or New York?

A Miami.

Q Do you know some of the major stockholders in that company?

A Yes.

Q Meyer Lansky is a stockholder in that company?

A Not a major stockholder.

Q Is he a stockholder?

A As of the record book, he was. I don't know if he still is.

Q What years, roughly?

A 15 years ago.

Q Does he still own stock in that company?

A I don't think so.

Q Do you know Meyer Lansky? I asked you that before.

A No, I don't.

Q Never met him at Marblehead?

A Never met him at Marblehead.

Q Never met him in Miami?

A Never met him in Miami.

Q Your partner for a period of time in the publishing business was John Gigglio?

A Yes.

Q Is he a personal friend of yours?

A Yes.

MR. SHUMAN: Off the record.

(Discussion held off the record.)

MR. FARRELL: I have not concluded examining William Levine. I want to continue my examination as long as it takes to conclude my examination without any limitation. In view of the information given to me this afternoon by Mr. Geraughty of the firm of Townley, Updike, Carter & Rodgers, that he telephoned Judge Marvin Frankel and asked for an extension of time of one week, such information having been given to me by Mr. Geraughty when I met

him today at approximately one o'clock, I believe that alteration of Judge Frankel's orders in the manner in which the time for this would be conducted, I am sure that since he extended the courtesy to Mr. Geraughty to give him a week of time for his motion and an additional week of time, I am quite certain that if I would ask the Judge to extend the same courtesy to me and allow me to continue this examination for a period beyond one hour, I am certain it would be granted.

MR. GERAUGHTY: May I make this statement for the record? I wrote to Judge Frankel last week a letter that I intended to send on Friday, first, attempting to seek the concurrence of counsel in requesting a second extension of one week in our time schedule for the filing of papers in connection with a contemplated motion for summary judgment. My request was predicated on the fact that Judge Frankel, in his pre-trial conference, directed the completion of depositions during the week of April 7th. In view of the fact that Mr. Levine's deposition and Mr. McCollough's deposition could not be conducted

until today, I wrote to Judge Frankel and said that we would like one additional week so that we could be present for Mr. Levine and Mr. McCollough's testimony to see if that testimony would affect anything that we might say in the drafting of our final motion papers. I told Judge Frankel that in the letter, that this was the sole purpose for the extension, that otherwise we would adhere to the April 21st day for the filing of motion for summary judgment. I am quite confident that Judge Frankel's agreement to the one-week extension today was based on the fact that we would have an opportunity to evaluate Mr. Levine's testimony and Mr. McCollough's testimony.

In consequence, I do not think that Mr. Farrell correctly draws the conclusion that Judge Frankel would look kindly on a request for an adjournment of this deposition, because that will only cause us to request additional time to file the motion for summary judgment. Obviously, Mr. Farrell can make an application to Judge Frankel if he chooses, but I think that the record ought to be set straight so he is not under any mis-

apprehensions.

Let me also state, on the record, I have sat here as counsel for the News --

MR. FARRELL: Hold it. You want to say it off the record?

MR. GERAUGHTY: I will pay for it and say it on the record. What I have to say is this --

MR. FARRELL: Hold it. Off the record.

(Discussion held off the record.)

MR. FARRELL: I want to continue with William Levine and I want to put that on the record. I want to put on the record that I have not finished my examination with William Levine, that I would require a minimum of another few hours. However, in the form of being cooperative, I would request another twenty minutes.

MR. SHUMAN: I would like to put this on the record: Mr. Farrell, as he has just said, requested a few hours. As soon as he realized that I had told my client that -- according to our previous agreement -- that it would only be an hour, Mr. Farrell is now telling me that it is now going to be several hours, my client having scheduled other meetings, and Mr. Farrell, knowing that he

ORAL TESTIMONY(EXAMINATION BEFORE TRIAL) *

April 15th,1975

of

WILLIAM A.McCOLLOUGH

President of the Defendant American News Company,Inc.,Member of its Board of Directors,and President of Defendant Ancorp, Inc..

* Handwritten inserts to be disregarded.

A About '69.

Q About that time, you became president?

A Shortly thereafter, yes.

Q Are you a stockholder in Ancorp?

A Am I?

Q Yes.

A I have no stock.

Q Were you a stockholder?

A Yes.

Q When?

A I was a stockholder in sixty -- '69.

Q Did you sell your stock?

A No.

Q You still have your stock?

A I don't have it.

Q What did you do with it?

A The stock is not in my name.

Q Your wife's name?

A Yes.

Q Does she still have it?

A Yes.

Q When you were appointed president, how did you become president?

A I was appointed by the Board.

Q Up to that time, were you familiar with the publishers who were distributing magazines to American News Company?

A Some of them.

Q Would you mention some of them?

A Dell Publishing, Popular Library, Time and Life, Look Magazine.

Q And many others?

A And many others.

Q When American News Company discontinued the distribution of magazines, were you familiar with a company called Manhattan News Company?

A Yes.

Q Do you know who the people were that owned Manhattan News Company?

A I understand the Garfinkle family owned it.

Q Did you advise the magazine publishers, such as Dell, Time and Life, to distribute through Manhattan News since you were going out of business?

A No.

Q Do you, as a man experienced in the magazine business, have any personal knowledge that such publications then sought their local distribution in place of Manhatt and American News through other news companies?

his family owned Manhattan News? Did you ever discuss that at these Board meetings?

A Not to my knowledge.

Q Were you ever familiar with the fact that it was possible that Mr. Garfinkle was told to divest himself of any interest in Manhattan News because there might have been a conflict of interest with his going out of business at American News for the distribution of magazines?

Do you understand my question, Mr. McCollough?

A No, I don't follow you.

(Whereupon, the reporter read back the last question.)

Q Can you answer it now?

MR. SHUMAN: He does not know who you are referring to.

Q Let me rephrase the question, then.

At a Board meeting, after you decided to discontinue the distribution -- not at that meeting, but when you made the decision at the meeting to discontinue the magazines -- was there ever a discussion at a Board of Directors' meeting concerning the possibility that Mr. Garfinkle's decision to go out of the business of the distribution of magazines, and that Manhattan News

Company had picked up many of the publishers that used to distribute through you at American News, that that decision might have raised an issue which might be called a conflict of interest, divesting the stockholder of the American News Company of a valuable piece of business?

A I wasn't a member of the Board when the decision was made.

Q You were not present at that meeting?

A I said I was not a member of the Board when that decision was made, so I couldn't be present.

Q Were you president?

A No.

Q What year?

A I think, as I recall -- I'm not sure of the date -- that I went out of the national wholesale magazine distribution business long before I became an officer of the company. I think about 1955.

Q Did you ever visit the Manhattan News Company?

A Did I ever visit?

Q Yes.

A Yes.

Q Did you do business with the Manhattan News Company?

Q The trucks.

A Which trucks?

Q That deliver your newspapers to your different newsstands in the metropolitan area?

A Metropolitan News delivers to us -- the Post delivers to us.

Q I am asking who you deliver to.

A We don't deliver newspapers.

Q Don't you deliver newspapers or have carriers deliver newspapers for you to your stands?

A We have -- the only one we have is the Village Voice.

Q By whom is that distributed to newsstands?

A That's distributed by an outside trucking firm.

Q Employed by you?

A Yes.

Q They are paid by you?

A They're paid for delivery.

Q What is the name of that trucking company?

A I don't recall the name right offhand.

Q How many places does that trucking company deliver the Village Voice to?

A I don't know the exact number.

Q Roughly.

Boston Newspapers?

A Who?

Q Greater Boston Newspapers?

A No.

Q Do you know a Willie Levine?

A Do I know Willie Levine? Yes.

Q How long do you know him?

A Oh, I'd say I must know Willie for -- estimate -- are you asking a question or am I answering you? I met Willie -- this would be purely approximate -- sometime after I came to New York in 1954.

Q Under what circumstances? How did you meet him?

A How did I meet him? I was introduced to him.

Q Was he in the trucking business then?

A I don't know.

Q When you became president, executive officer, chief executive officer under Mr. Garfinkle, who was chairman, did you do any trucking business with Willie?

A No.

Q Did you do any business with Willie at all?

A No.

Q Your relationship with Willie Levine was purely social?

A No.

Q You had a business relationship with him?

A No. Willie Levine had nothing to do with Ancorp.

Q Did you have any relationship with Willie Levine?

A No.

Q Business or social?

A No.

Q He visited your office many times?

A He came to the office, yes.

Q Did you ever hear of an E & M Trucking Company?

A E & M, yes.

Q Do you know who owns E & M?

A Who actually owns it, I couldn't tell you.

Q How do you know that was the name of a trucking company?

A Because we used them for delivery.

Q Who engaged them?

A Who engaged them?

Q Yes.

A I don't know. I did not engage them, so --

Q Did you know a John Gigglio?

A John Gigglio I know.

Q Did you know a Sol Gigglio?

A Sol -- I don't recall a Sol.

Q Did you know that John Gigglio and Willie Levine were partners in E & M Trucking Company?

A No.

Q For what purpose were they engaged in trucking by you?

A I didn't engage them. Let's get the record straight.

Q They did business with Ancorp?

A Yes.

Q You were president of the company when they were engaged?

A Yes.

Q Who engaged them?

A I don't recall exactly.

Q Would it be with your approval?

A No.

Q For what purposes were they engaged?

A Delivering for what we call a retail warehouse for our newsstands.

Q Do they still do business with you?

A Yes.

Q And you don't know the principals of that company?

things beyond your scope, right?

A Right.

Q You were the boss?

A No, sir. I was not the boss.

Q You were the president of all of the companies we mentioned, American News and Savarin?

A Right.

Q And when it came to making decisions and running those operations, you made the decisions on your own as the executive officer?

A Unless it was a necessity to bring something to the Board. I'm talking about daily operations.

Q But the Daily News, you ran the company?

A I was president, but I was not Chairman of the Board. The Chairman of the Board was above me.

Q On what occasion did you discuss decisions with superiors or Chairman of the Board?

MR. SHUMAN: Let's be a little more specific, please. He can go on for 35 years.

A I can go on forever.

MR. FARRELL: In 1969, when he became president, who made the decisions in the daily operation of the companies to which he was president?

MR. SHUMAN: Mr. Farrell, he has already told

you and he is not going to be more specific. He can not answer the question fairly. What do you want to know, when he went to the bathroom?

Q Who made the decision to use the E & M Trucking Company?

A I do not recall.

Q Was it Mr. Garfinkle?

A I don't recall.

Q Was Mr. Garfinkle a director?

A I don't know.

Q Was it you?

A I think I have answered it five times and I told you it wasn't me.

Q Who signed the checks for E & M?

A The treasurer signs the checks.

Q Who approved the invoices?

A Who approved the invoices? They go through the accounting department and we approve them.

Q You would approve them?

A Yes.

Q After they are presented to you?

A Yes.

Q Are you familiar with a Justice Department suit against Ancorp?

A Which one?

Q The one in which you were recently fined $208,000.

A We were fined $208,000?

Q Right.

MR. SHUMAN: That is not factually accurate. Are you speaking of the F.T.C. case?

MR. FARRELL: Correct.

A Yes.

Q You were there during that period in which these violations took place?

A What violations?

Q The kickbacks.

MR. SHUMAN: What are you asking him?

MR. FARRELL: I am asking him if he was the executive officer in charge at the time these illegal charges were being made.

Q (Continuing) The F.T.C. fined your organization the sum of approximately $208,000. I am asking you if you were the executive officer at that time?

A I was president of the corporation.

Q Were you there at the time these transactions took place?

A There were no kickbacks made to anybody.

Q There were charges made to newspapers.

A To publishers, yes.

Q Which the F.T.C. found illegal.

MR. SHUMAN: Mr. Farrell, hold it. Let's not discuss that case.

MR. FARRELL: He was executive officer. I was asking him what he did while he was executive officer.

MR. SHUMAN: Regarding this case, Mr. Farrell, please.

Q You stated that you were involved, your company was involved in the Village Voice?

A Yes.

Q Is that correct?

A Yes.

Q Did you have any problems with the Village Voice?

A Yes, we discontinued to handle them at one time.

Q Did you then renew handling them?

A Yes, we did, on a proper price arrangement.

Q What was the reason you discontinued handling them?

A The reason we discontinued the handling because -- I don't recall the exact reason -- was a price involved,

and they had two different price arrangements, as I recall.

Q Are you familiar with a series of articles that were printed in the Wall Street Journal on July 3, 1969?

A I couldn't remember what was printed on July 3, 1969.

Q I will refresh your recollection.

Are you familiar with an article that read, "A rough dealer. Control of newsstand distribution provides Garfinkle with power over publishers."

MR. SHUMAN: Hold it. I do not see what this has to do with -- do you want to read from the article?

MR. FARRELL: I want his knowledge about the distribution.

MR. SHUMAN: Ask him if he has knowledge of distribution. Don't quote from articles.

Q Do you have knowledge of charges that were made in the Wall Street Journal concerning the irregularity of operations of your company during the time in which you were president?

MR. SHUMAN: Don't answer that question.

Q Were you ever shown an article in the Wall

Street Journal concerning the American News Company or Ancorp while you were president of the company?

MR. SHUMAN: Don't answer.

Q Do you refuse to answer that question on advice of counsel?

A Yes.

Q Were you ever present at a Board of Directors meeting at which that article was discussed?

MR. SHUMAN: Don't answer.

MR. GERAUGHTY: If you are going to make reference to an article or a newspaper clipping, could we have it marked for identification, please, and make it part of the record?

MR. FARRELL: I would be very happy to furnish you with a copy of that.

Q Are you familiar with the man, Ron Kessler?

MR. SHUMAN: In what connection, Mr. Farrell?

MR. GERAUGHTY: Mr. Farrell, I made a request on the record. Would you please mark whatever you are referring to as an exhibit?

Q Were you ever at Roy Cohen's house, Mr. McCollough?

MR. SHUMAN: Let's note, on the record, that the request is being denied.

A Ancorp and Metropolitan?

Q Ancorp or American News and Metropolitan.

A No.

Q Are you friendly with David Rosen of Metropolitan?

A I know David.

Q Are you friendly with him?

A Not friendly.

Q Why aren't you friendly with him?

A What do you mean by friendly? I don't know what you mean.

Q You said you are not friendly.

A I said I know him.

Q You also said you are not friendly, and that's what the record says.

A I am not a friend of his, in the word used, "friend."

Q Are you familiar with what I colloquially called dirty tricks in the magazine and newspaper business?

A I don't know what you mean by dirty tricks.

Q Have you ever heard the expression of "dirty tricks" in the magazine and distribution business?

A There's no such thing as dirty tricks.

Q What was the company's policy?

A The company's policy, on any publication, it's presented to our newspaper department, for example, and then it's evaluated as to what it is at a particular time.

Q And then was it brought to the attention of Mr. Garfinkle before the decision was made to distribute or not to distribute?

A As I recall, I don't ever recall Screw Magazine coming and asking us to distribute them.

Q When there was a question concerning a magazine or a publication or periodical, did Henry Garfinkle have the sole discretion of rejecting something?

A No.

Q What?

A No.

Q The Board of Directors?

A No.

Q Who?

A It was presented to -- any publication comes out. If it came out today -- for example, we got a call from an Arkansas Sun, as I remember the name. I never heard of it, but he certainly has a right to present it to us, and everything is evaluated at the time it is presented.

Q What kind of work with all divisions? What kind of work?

A He's an executive.

Q He is an executive?

A Yes.

Q Does he carry a title?

A No.

Q Assistant executive?

A An executive is someone --

Q Does anybody have a title?

A Sales manager, sales clerk. He's an executive.

Q What does he do?

A He works for us in all divisions.

Q Are you reluctant or hesitating to answer my questions?

A No, I just answered it.

Q What does he do? You are the boss, you are the president.

A I am not the boss. Mr. Myron Garfinkle is the boss.

Q Does Willie Levine work under you or under Myron?

A He does not work under me.

Q works under Myron?

A Yes.

Q What is his salary?

A I do not know.

Q Who signs his checks?

A I think they are signed by the computer service.

Q You don't sign the checks?

A No, sir.

Q Does Myron Garfinkle sign the checks?

A No.

Q Since you are the president and the operating executive of Ancorp, who made the decision to hire Willie Levine?

A As president, right now my main responsibility is overseeing the retail division and --

Q You are not answering my question.

A I'll answer it.

(Continuing) -- and any other projects that might be given to me to work on. Therefore, I would make no decision to hire Willie Levine.

Q Myron Garfinkle is the boss?

A Right, he's the boss.

Q Of the stockholder company, of a public company?

A He's the boss.

Q And before that, Henry Garfinkle was the boss?

A He was Chairman of the Board.

Q Can Myron hire anybody without consulting with you?

A Sure he can.

Q Can Myron do anything without consulting with you?

A He doesn't have to consult with me.

Q Was that the same situation with Henry?

A Did he have to consult with me?

Q He did not have to consult when he did not want to?

A No.

Q And he made all the decisions without consulting with you, if he wanted to?

A Mr. Garfinkle was my boss both ways.

Q But you are president of the company.

A But he was Chairman of the Board, the Chief Executive Officer.

Q And you are the president of a publicly-owned company whose duties it is to serve the public stockholder.

MR. SHUMAN: If you don't mind me helping him

periodicals that are accepted or not? What does Willie Levine do?

A Willie Levine, as I told you, was, I would classify it as an executive, regardless of whether he has a title or not -- working with committees in divisions.

Q What committees are those?

A Committees of the various retail and food divisions, match divisions, et cetera.

Q Do you know whether Willie Levine has any background in the food or restaurant business?

A I wouldn't know the answer to that.

Q Do you know whether Willie Levine has any administrative ability?

A I'd say he has very capable administrative abilities.

Q Despite the fact that you work as president of the company, of Ancorp, you have no idea what his salary is?

A I do not know what his salary is.

Q Does Willie Levine get $1,000 a week?

A Does he?

Q Yes.

A I don't know. I don't know his salary. I don't know what he gets a week.

Q Have you any idea why Willie Levine and Henry

Q The first access into this company was when he became president?

A When he became president -- when he became chief executive officer and Chairman of the Board.

Q That took place after the petition was filed?

A That took place after Chapter XI.

Q Have you any knowledge how Myron Garfinkle got into the company after the petition was filed? I am referring to how, suddenly, after the petition was filed, he winds up as the chief executive officer.

MR. GERAUGHTY: Objection to form.

Q Can you answer that question, Mr. McCollough?

A (No response.)

(Whereupon, the reporter read back the last question.)

Q Would that be by a Board of Directors' election?

A Yes, election.

Q Did you vote on that . a director?

A Yes.

Q Was Henry Garfinkle present at that meeting?

A No.

Q How many members were present at that meeting, do you recall?

A I don't recall.

Q Did you get any instructions from Henry Garfinkle to vote his son in?

A No.

Q You did this of your own volition?

A Yes.

Q You had never known Myron Garfinkle prior to this incident, right?

A I met Myron Garfinkle when he was -- right -- I knew Myron.

Q He did not work for your company at all?

A No.

Q He had no background with your company at all, right?

A Background insofar as working with the company?

Q Yes.

A No.

Q And yet you decided to make him chief executive officer, you as a member of the Board?

A Yes.

Q Who nominated Mr. Myron Garfinkle as chief executive officer at that meeting?

A I'm not sure who did it, who made the actual nomination. I think it was Mr. Morrisey.

MR. GERAUGHTY: Off the record.

(Discussion held off the record.)

Q Did you finish your answer?

A I am thinking about the salaries you asked me. As I recall, you asked about Willie Levine's salary. I think it's around $35,000, approximately.

Q Willie Levine's?

A Yes.

Q Mr. Garfinkle resigned his post as Chairman?

A I was at a Board meeting when it was announced that he resigned.

Q Was he present?

A No.

Q And his resignation was voted upon and accepted?

A Yes.

Q Was there any particular reason, to the best of your knowledge, as to why Mr. Garfinkle resigned?

MR. GERAUGHTY: Off the record.

(Discussion held off the record.)

MR. GERAUGHTY: We have had an off-the-record conversation in which I suggested to Mr. Farrell that in view of the fact that Mr. McCollough's counsel has left the room, that the line of

questioning that he is now pursuing with respect to the change of management of Ancorp in 1973, be discontinued at this time with the understanding that, if Mr. Farrell wishes to pursue that line, that he arrange to make an immediate application to Judge Frankel for a further deposition date to pursue this line of testimony at a subsequent time when Mr. McCollough can be represented by counsel. The point that I simply want to make is that if this application is going to be made, I would like it to be made within the next two days, because our date for filing motions here is the 28th, and I want to know whether or not this line is going to be pursued in conjunction with our preparation of motion papers.

MR. FARRELL: Off the record.

(Discussion held off the record.)

BY MR. FARRELL:

Q Do you know a Jack Underwood?

A I know Jack.

Q Do you know who he is employed by?

A No.

Q Do you know Jack Underwood?

A I know him, yes.

(Discussion held off the record.)

MR. KLEIN: I am just trying to get his familiarity with the subject.

A As I recall, are you referring, specifically, to the Daily Mirror?

Q Yes.

A As I recall, the Daily Mirror came out in 1971.

Q 1971?

A I think this was the date.

Q For how long do you understand a space was allocated for it?

A As long as we handled it.

Q When was that?

A I think it was -- I would have to say, approximately three, four, five days, somewhere along there.

Q Two, three, four, five days?

A Yes.

Q And then it was discontinued?

A It was discontinued.

Q Do you remember the order given for the discontinuance of it?

A Yes.

Q Did you make that order?

A Yes.

for eleven cents." Therefore, we would not accept them.

Q What was the nature of the relationship of Henry Garfinkle to this transaction with regard to the Mirror, so far as you knew, at that time of the year in 1968, 1969, 1970 and 1971?

A He was not in on that transaction at all.

Q So that you would say, now, that Henry Garfinkle never at any time expressed himself with respect to whether or not the Daily Mirror was to be shown, displayed on your 650 newsstands or any newsstands owned by you and the News?

A As I explained before, and I will explain it once more, Mr. Rausch made the arrangements through our newspaper department, and the instructions would come from Mr. Rausch to our stands. Mr. Rausch's instructions to our stands was to give it a full-front display. Mr. Garfinkle did not enter into it.

Q Mr. Garfinkle had nothing whatever to do with the disposition of the Mirror on the stands of Union News?

A He did not. I told you, Mr. Rausch.

Q He had nothing to do with the circulation on the Union newsstands of the Daily Mirror?

A No.

Q Did you know Mr. Farrell at that time? Did you know the name Mr. Farrell?

A No. Mr. Farrell called me later on.

Q He did?

A He did.

Q What did he say to you and what did you say to him?

A As I recall, the Daily Mirror was off the stands right after the 1st of the year.

Q How long had it been on the stands?

A I've answered that already -- and I did not hear from Mr. Farrell until June, but approximately six months later, in June, '71, I think that Mr. Farrell called me and asked if he could come down and discuss the possibility of us handling the papers.

Q What did you say to him?

A I invited him down to the office.

Q Did he come?

A He came.

Q What did you say to him and what did he say to you?

A He said he would call of the suit if his papers were distributed.

Q When was the decision made?

A The decision was made not to handle it.

Q Was there a reason given by you at the time in connection with that decision as to why you would not handle it?

A The decision came about that we wouldn't handle them because of the price factor that our own distributor set, which was not profitable enough to handle the publication which, as I say, he would not give it to us at the price he was previously giving it to us.

Q So you would now go on record to say that your employer, your Union newsstand business, refused to take the Mirror on because it was uneconomical, and for no other reason?

A No other reason.

BY MR. FARRELL:

Q Mr. McCollough, since you and I met at that meeting, was that pursuant to a letter I sent you?

A I don't recall whether you sent a letter or not, Mr. Farrell, you possibly could have, but I don't recall.

Q You were paying Gregg News how much?

A Ten and a half cents.

Q And isn't it a fact, Mr. McCollough, that I

wrote you a letter that I would charge you ten cents?

A I do not recall.

BY MR. KLEIN:

Q Your understanding, therefore, was that whatever the price was, ten and a half cents or more, that that was uneconomical for you; is that right?

A At the ten and half cents, we handled it.

Q You would handle it?

A We did handle it.

Q And it was raised?

A I told you, the distributor you selected refused to give it to us at ten and a half, and not even eleven.

Q So that your claim is, now, that there was no offer made at any time for a price under ten and a half cents?

A Not that I recall.

Q Did you make a decision, or did Mr. Garfinkle, in conjunction with you, make the decision to eliminate the Mirror from the Union newsstands?

A I made the decision.

Q And you made that in confirmation of a decision made by Mr. Rausch, your subordinate?

A Mr. Rausch, when he brought me the information, would not give it to us at ten and a half cents and

and newspapers, correct?

A I can't speak for the local newsdealer on the corner.

Q But it is important for a man in business to receive --

A If that's his business, it's certainly important.

Q And getting magazines and periodicals like the New York Times, Life, Look is very important to him, right?

A I can not speak for an individual.

Q But as a man in the field, in the business --

A I will not speak for the man in the field.

MR. KLEIN:- He means you as a man in the field.

THE WITNESS: That's not what he's saying.

Q I am saying to you that a Mr. Smith, owning a candy store in this building, it would be important for him to get the newspapers and magazines to sell?

A That would be up to Mr. Smith to answer.

Q You couldn't answer that?

A I have no dealings with a Mr. Smith.

Q You don't think that a man who requires merchandise, it is important to him to get that merchandise?

A I think he should get it, yes.

corner who had a newsstand, it would hurt that man's business; wouldn't it?

A I think --

Q He could not go to somebody else?

A I think he could.

Q An exclusive --

A I don't think --

Q He could get Time-Life from another wholesaler?

A I would say he could today.

Q I am talking about 1972, 1970 --

A You are talking about in those particular days when the independent wholesaler, which I had no control over.

Q But you refuse to tell me, as a businessman, that the denial of merchandise to a dealer would affect his business?

A If a man was in the specific business, whatever it be, and he couldn't get the merchandise, I don't suppose he'd be in the business.

Q And where people have an exclusive to distribute something like Time and Life that are only distributed by one wholesaler, and if that magazine were denied distribution to him, it would affect him

in some way?

A You are asking me to answer something that I have no knowledge of. Maybe it wouldn't affect him.

Q If a newsdealer or a man with that stand does not pay his bills, then his distributors would stop sending him merchandise?

A I wouldn't know.

Q Don't you know? That is your business.

A We're not in the wholesale magazine business.

Q But you are a businessman and know what takes place with a business.

A I know what takes place with our business, but I'm not going to answer for somebody else's business.

Q If an individual, be it Henry Garfinkle or Myron Garfinkle or you or anybody else, were to go to a newsdealer, the man who sells the newspapers on the stand, and says if you carry the Daily Mirror, you are not getting the New York Times or -- forget the Times -- if you don't display and sell the Daily Mirror, you are not going to get any Time and Life --

MR. GERAUGHTY: I object to the form of the question.

A I couldn't answer that question.

Q Do you understand what I am saying?

A You are asking me a question that I have no knowledge of that.

Q I said, do you understand what I am asking you?

A I do not really understand what you are asking. If you'll explain it a little further, maybe.

Q If a package of cigarettes reaching great popularity, such as Winston-Salem, if the distributor selling Winston-Salem to a candy stand were to tell him, "You can't have any Winston-Salems unless you carry Screw Magazine--"

A I would have no knowledge as to whether he is telling him that or not.

Q If a wholesaler told that to a man --

A I would have no knowledge.

Q Let me put it to you in the last sentence --

A You are asking me a hypothetical question.

Q I am giving you another question. It is not hypothetical. I am asking you, as a businessman, if a product were denied to a dealer, would that hurt his business if that were a popular product?

A What product?

Q Winston-Salem.

A I wouldn't know.

Q Milk?

A I wouldn't know.

Q Bread? You are a businessman, aren't you?

A I refuse to answer the questions on the grounds you are asking me something I have no control over. I am not about to put my shoes in another man's business.

Q What automobile do you drive?

A What automobile do I drive?

Q Yes.

A A Ford.

Q You need parts for that Ford when it gets into trouble, don't you?

A Is it gets into trouble, I assume -- I'm not a mechanic.

Q If the Ford agency carrying those parts refused to give them to you, where would you go?

A I can get them other places.

Q If you couldn't get them anyplace.

A I'd call everyone.

Q Your car would not run right.

A Any mechanic can fix a car.

Q But you need parts. If he couldn't get the parts.

A It is a hypothetical question.

Q You are just being smart.

A I'm not being smart.

Q As a businessman, if you can't get a [illegible] to put papers in --

A I can get a briefcase.

Q If you can't get a briefcase?

A I'd get something else.

Q If a company told someone, "Don't do business with Farrell," then you couldn't buy anything from me.

A I don't know of anybody doing this.

Q If they did.

BY MR. KLEIN:

Q Let me ask you this, Mr. McCollough: Do you know, for the record, that during any time that any newsstands were under your supervision, whether anybody was told, either indirectly or directly, not to sell the Daily Mirror?

A Not to my knowledge, never.

Q You say that absolutely?

A Absolutely.

Subscribed and sworn to before me

this day of , 1975.

ORAL TESTIMONY (EXAMINATION BEFORE TRIAL) *

February 22nd,1974

of

EDWARD M.MAHER ESQ.

Member of the law firm of Townley,Updike, Carter & Rodgers Esqs. ,attorneys for the Defendant New York News Inc.,

* Handwritten inserts to be disregarded.

Q When you wrote this letter with respect to "Post Position," were you at that time authorized to protest the publication of the Daily Mirror as a publication in competition with your client?

A No.

Q -- New York News, Inc.?

A No. It was directed solely to the use of the Post Position game.

Q And notwithstanding that this letter of August 31st, 1965 had come from your office preceding the issuance of this letter, you say you were at that time concerned with nothing else but the use of Post Position by the Daily Mirror?

A That is correct.

Q Do you remember whether at that time the letter of August 31st, 1965 was before you when writing the letter of March 16th, 1971?

A As I said, I don't recall.

Q You don't say "no" to that, you just don't recall?

A That's right.

MR. HUGHES: I think we should let the record show that the letter of August was written to a different

corporate entity, as a matter of fact.

Q I think the letter should show that the one addressed by Mr. Maher is to Daily Mirror at 42-15 Crescent Street, Long Island City, attention Mr. Farrell, and the earlier one of 1965, August 31st, is addressed to Mirror Publications, Inc., at 845 Third Avenue.

Q When you wrote this letter with respect to your claim as to the use by the Daily Mirror of the Post Position, did you have any documents in your possession which in any way constituted the basis for that claim or protest?

A I doubt it, at that time.

Q We are talking about 1971?

A That's right.

Q Are you endeavoring to say then, Mr. Maher, that your sole basis for protesting the Daily Mirror's use in 1971 of the "Post Position" was some oral representation by an officer of the Daily News?

A It was not my sole reason.

Q Can you give us any other reason?

A I knew what the New York News acquired from the Hearst Corporation in October of 1963. I knew this

was one of the features acquired.

Q Did you handle that transaction yourself in 1963?

A I did.

Q Do you have the documents concerned with the acquisition of that, of the Daily Mirror publications — of those rights?

A I don't.

MR. HUGHES: We notified you the last time that we objected to any questions or production relating to the 1965 transaction; that it has no relevance to this cause of action; that it is well beyond the statutory period of limitation; that it has absolutely no bearing on the issues in this case which relate to an alleged agreement or conspiracy in 1971.

MR. KLEIN: Off the record.

(Discussion off the record.)

Q Will you tell me now on what, if anything, you based this claim of the News to Post Position when writing that letter?

A The Daily Mirror acquired the rights to that name — I mean the News acquired the rights to that

name from the Hearst Corporation in the fall of 1963. The News had also used that feature for sometime after its acquisition.

Q When you say "They acquired that right," was it by certain execution of documents?

A It was.

Q I ask you now whether copies of those documents are in your possession as an attorney for the News --

A Not in my personal possession.

Q Are they in the possession of the attorneys for the News?

A Yes.

Q I ask you to produce them.

MR. HUGHES: We made our statement on the record with regard to that.

Q Will you tell me what the terms of that acquisition were as far as you recall them in the absence of the documents? Can you recall the terms?

MR. HUGHES: We think that that inquiry is not relevant to the issues in this case.

I will allow the witness to answer

that particular question.

MR. KLEIN: Off the record.

(Discussion off the record.)

A We acquired the name and the good will of the Mirror, we acquired certain editorial features, we acquired certain promotion features, we acquired certain circulation lists, we acquired the Mirror's morgue or library, we acquired I think filing cabinets, we also acquired some vending machines.

Q Will you tell me in having listed that number of things that you did acquire, perhaps you can add to the intelligence of the situation by telling us particularly if you recall what things you did not acquire?

A We did not acquire any land or buildings, we did not acquire any presses, any trucks.

Q Generally the mechanics of the operation and the physical basis of the operation?

A Fixed assets we didn't acquire.

Q You didn't acquire fixed assets, all right. Now, were you the one who drafted the agreement for the acquisition by the News on behalf of Townley, Updike, Carter & Rodgers?

A I was.

Q Can you tell us what the consideration was?

MR. HUGHES: I am going to object to that.

MR. KLEIN: That is part of the same objection; that we want to see the documents and the documents are the best evidence of that.

You are forbidding the witness to testify outside of the documents at this point.

MR. HUGHES: Right; with regard to that being considered privileged information and with regard to it being irrelevant to any issue in this case.

Q Now, did the rights that you acquired include any right of publication of the Mirror as it was then formatted?

A Yes.

Q Did you ever exercise that right so far as you know of your client's activities?

A I believe they never did.

Q They never did?

A No.

Q At or about the same time?

A No.

Q Do you recall now whether at the time you wrote this letter both papers were using Post Position?

A The News was not.

Q The News was not?

A No.

Q The News had been using it?

A Yes.

Q And discontinued it?

A Yes.

Q Do you know whether they discontinued long prior to the use by the Daily Mirror in 1971 or would --

A I know they had been using it when it was acquired. I know it was not being used in 1971.

A Now, whether it had been used in the interim, I just cannot say.

Q Nonetheless, you saw fit, at the time when it was not being used by the News to call upon the Daily Mirror to cease and desist from the use of it?

A I did.

Q Did you take any steps thereafter in enforcement of that position; do you recall?

A We did not.

Q Can you recall any authority received by your office or lack of authority to enforce it or not enforce it?

A I can.

Q Was that an authority not to enforce it?

A That is correct.

Q Did you continue in that course so far as you know to the very end of the existence of the plaintiff Daily Mirror?

A That's correct.

Q In other words, you never took any steps to enjoin the Mirror from the use of that position?

A That's right.

Q Can you remember who it was that gave you the authority not to enforce it?

A The then treasurer of the News who said that the new Mirror would sink of its own weight.

Q The then treasurer did you say?

A Yes.

Q What was his name?

A James J. Lynch.

Q Was there a more extended conversation than what you just gave us now between you the the treasurer?

A That was the essence of it.

Q Now, Mr. Maher, you know that that statement of Mr. Lynch would have been, in the the normal course, a confidential communication to you; is that not so?

A I don't know.

MR. KLEIN: Off the record.

(Discussion off the record.)

Q Mr. Maher, if I ask you again what the consideration was that the Daily News or the News, Inc. organization parted with to obtain the Daily Mirror rights, you still consider that confidential?

MR. HUGHES: I would direct the witness not to answer that question as I did before.

MR. FARRELL: Off the record.

(Discussion off the record.)

Q In the year 1971, the issue arose as to whether the Mirror should be enjoined, and the decision of the office and the News organization was "no."

A The decision was to take no action because of the other organization's use of Post Position.

Q Did you at any time, Mr. Maher, on behalf of the Daily News, consider, apart from the ultimate success or failure of the Daily Mirror, did you consider the Daily Mirror or your principals consider

A That's right.

Q Mr. Maher, can you tell us now precisely the conversation that you had, if you can recall, that you had with Mr. Lynch, the treasurer of the Daily News, Inc., with respect to the prospective life of the Daily Mirror?

A I would suggest that sometime after this letter was written and no reply had been received, that I asked the treasurer what I should do about it. At that time I was told "Forget it, this new organization will sink by itself."

Q Was that the entire conversation?

A The essence of it.

Q Can you say anymore than merely the essence of it?

A I cannot.

Q If you give us the give and take of that conversation, I would appreciate it.

A The conversation may have covered eight or nine different matters thoroughly unrelated to this.

Q Unrelated?

A I asked the question should I pursue this and I was told "No."

Q You were told "No."

A So that might be considered the essence or substance of the conversation?

A This might have taken thirty seconds or five minutes.

Q At most?

A At most, yes.

That is the essence of it.

Q Do you happen to recall at this time whether your client or Mr. Lynch had advised you as to what the circulation of the Daily Mirror was?

A No.

Q Did that enter your conversation?

A I think I had no information about its circulation.

Q Were you at that time familiar with the circulation of the Daily News?

A Generally.

Q Did that question come up of the difference between the circulation of the Daily News and the circulation of the Mirror?

A No, I don't believe so.

Q It didn't come up?

A I don't believe so.

Q And as far as you are concerned, you didn't ask any questions with regard to that?

A Not with all of them.

Q Is your firm consulted when a newspaper client of the syndicate does not pay its obligations, do you sue them, if asked to sue them, for collection?

A If we were asked to, we would.

I am trying to recall if we had ever had a suit against a domestic, United States publisher.

I do recall writing letters over the years to a newspaper in Montreal and one in Beirut, Lebanon.

Q Are you familiar with the fact whether that syndicate established credit for its customers?

A I am not.

Q Is there such a credit check done on potential customers or buyers of the syndicate's features?

A I don't know. I would imagine so.

Q Are you familiar with any information as to the syndicate accepting the Daily Mirror Inc. as a customer in 1971?

A I do know that Chicago Tribune - New York News Syndicate was selling some comic strips to this new Daily Mirror.

Q And some columns?

A That might be. I am only familiar with comic strips.

Q Would it be fair to assume that upon the sale of features from the Chicago Tribune-News Syndicate Inc. to the Daily Mirror, Inc., that credit was being established with the Daily Mirror Inc.?

A There would be credit, I assume, for -- maybe it would be a weekly billing, a monthly billing, I don't know.

Q But you are familiar that the Chicago Tribune-News Syndicate Inc. did enter into a contract with the Daily Mirror Inc. in or around 1971 for the sale of its features available to the Daily Mirror Inc. in this territory?

A I don't know the form of the contract.

I do know that features were being sold to the new Daily Mirror.

Perhaps I might tell you that Chicago Tribune-New York News Syndicate has a printed form of contract.

What terms of payment go in each printed form with a particular publisher, I don't know.

Q Are you aware of any information to the extent that the Daily Mirror Inc. paid all of its invoices to the Chicago News Tribune Inc.?

A I have no idea.

MR. PARKER: Nothing else.

MR. HUGHES: I don't think he could answer that fact.

MR. KLEIN: Off the record.

(Discussion off the record.)

EXAMINATION BY

MR. FARRELL:

Q Mr. Maher, do you know at what date, approximately, the News increased its price?

A Would it be fair to say in 1963 the price of the Daily News was five cents?

A I am embarrassed to admit I don't know.

Q The reason I am asking this question is that there came a time --

A I know it went from two to three to five to seven -- or a period -- I recall buying it as young man for two cents. I know I pay ten cents now.

Q I beg your pardon, it started off as a penny down on Murray Street when it first started.

The point is, is your law firm, the law firm of Townley, Updike, Carter and Rodgers, taken into consideration when decisions are made to increase the price of the Daily News?

A We certainly have been since August of 1971 when price control came in.

price of the News recently to thirty cents?

A I was.

MR. FARRELL: Thank you.

EXAMINATION BY

MR. KLEIN:

Q Does your activity with the Daily News bring you in constant touch with Mr. Underwood?

A No.

MR. KLEIN: Off the record.

(Discussion off the record.

EXAMINATION BY

MR. FARRELL:

Q Have you ever seen a prospectus that was issued by the Daily Mirror Inc. at about the year 1970?

A I have not.

MR. FARRELL: Off the record.

(Discussion off the record.)

Q Would you have any information that anybody else would be fully aware of that prospectus in your law firm?

A I would say that if I had not seen it, no one would have seen it.

MR. FARRELL: All right.

ORAL TESTIMONY (EXAMINATION BEFORE TRIAL) *

December 21,1973

of

JAMES W. RODGERS ESQ.

Member of the law firm of Townley,Updike Carter & Rodgers Esqs.,attorneys for the Defendant New York News Inc.,

* Handwritten inserts to be disregarded

what the question was.

A Q. Are you a member of the firm of Townley, Updike, Carter & Rodgers?

A Yes.

Q Do you live in the city?

A No.

Q Where do you live?

A 264 Millard Avenue, North Tarrytown, New York.

A Q. Are you or the firm of Townley, Updike, Carter & Rodgers the attorneys for the Daily News, New York News, Inc.?

A Yes.

Q When did that relationship begin?

A I would suppose January 1, 1934.

A Q. Are you -- when I say "you," Mr. Rodgers, I refer to either you or the firm.

Q Are you general counsel for them?

A Yes.

Q Would that take in all matters pertaining to the problems in publishing a daily newspaper, and Sunday newspaper?

A I suppose all, except possibly tax problems.

Q Are you familiar with a lawsuit that the Government filed, the Federal Trade Commission,

against Ancorp in 1962?

A No.

Q You are not familiar with it at all?

A Not at all.

Q You were not a defendant -- rather, the News was not a defendant in that action, but are you aware of the fact that testimony was taken by deposition of executives of the Daily News?

A No.

Q Are you acquainted with a Mr. Jack Underwood?

A Yes, I met him.

Q Do you know what his position with the Daily News is?

A At present something to do with the circulation department.

Q You say you were not aware of a deposition that Mr. Underwood gave to the Government in the matter of United States Government against Ancorp?

A I have no recollection of such a deposition.

Q Would someone else in your firm have knowledge of such a deposition?

A I don't know.

MR. HUGHES: I will stipulate with you

I have knowledge of it. I have knowledge of that case, and I have knowledge of the fact that Mr. Underwood, and I will so stipulate, testified in the trial of the action, as did Mr. Carey.

MR. FARRELL: Would either Mr. Rodgers or you know of the nature of the cause of that action?

MR. HUGHES: I can't speak for Mr. Rodgers. I have a general familiarity with the issues in that cause of action by the Government.

MR. FARRELL: Would you put on the record the main general issue of that cause of action?

MR. HUGHES: Well, I would think that the best evidence of that are the file papers in that proceeding.

MR. FARRELL: But the general nature of the --

MR. HUGHES: But the general nature of it, as I recollect it, is that the Government claimed that Ancorp or its prior subsidiary or --

MR. FARRELL: American News Company.

MR. HUGHES: -- corporations that it

either owned or controlled had its name changed to engage in violations of the Robinson Patman Act.

MR. FARRELL: Would your recollection be that that cause of action took place in 1962?

MR. HUGHES: No, I don't think that is correct. I think that the cause of action was probably instituted much more recently than that, that earlier there had been a Federal Trade Commission proceeding and, I think, an order was issued by the Federal Trade Commission that may have been affirmed by the Circuit Court of Appeals in 1962, and it involved activity of American News or Union News with certain magazine publishers and perhaps with Hearst Publications, and that the cause of action in which Mr. Underwood testified was instituted perhaps in 1970 or 1971, or some such time.

MR. FARRELL: I think I can refresh your recollection --

MR. HUGHES: But the best -- my recollection, it seems to me, is really immaterial. The best records are the files of

the Federal Court.

MR. FARRELL: In 1962 a cease and desist order was issued by the Government which required Ancorp to refrain from exacting $25,000 a year from the Daily -- the New York News and the New York Times.

Do you have any recollection of that?

MR. HUGHES: I am not being deposed here.

MR. FARRELL: Mr. Rodgers has no knowledge of it, and perhaps you do. If you don't I will accept your --

MR. HUGHES: I think that in response, I think that the best evidence of the Government's claim is the complaint and all of the papers and proceedings in that action.

Q A decision has recently been handed down by Judge Bonsal which has been reported in the press.

MR. FARRELL: In the Wall Street Journal, particularly, and I have a copy of that which refers to the fees exacted from the New York Times and the New York Daily News and the New York Post.

That decision, would it refresh your recollection --

MR. HUGHES: My recollection needs no refreshment, and I am not the witness.

MR. FARRELL: I will ask Mr. Rodgers these questions.

BY MR. FARRELL:

Q If you can help, I would be very grateful.

Mr. Rodgers, on December the 18th Judge Bonsal handed down a decision finding that Ancorp violated a cease and desist order of 1962 and fined them the sum of 200 and, I believe $204,200.

Are you familiar with that at all?

A Nothing more than you have just read in the newspaper.

Q Was your law firm involved in this action at all, as being the lawyers for the New York Daily News?

A I have no recollection that they were. They may have been.

Q This article says that the New York Daily News was paying Ancorp the sum of $2,500 a month.

A I know nothing of that.

Q The files would indicate, Mr. Rodgers, that the New York News started paying approximately $25,000 a year to Ancorp or its other name, which is the American News Company, on or about 1962, and despite a cease and desist order continued to pay that fee until 1969. Are you familiar with that at all?

A Not at all.

Q Are you familiar with the fact that Judge Bonsal's order fining Ancorp $204,200 was based on the fact that they violated that cease and desist order issued in 1962, that violation being the exacting of $25,000 a year from the New York News and the New York Times?

A I know nothing of that procedure.

Q As general counsel for the Daily News, when I refer to the Daily News I am referring to the New York News, Inc. -- as general counsel for the New York News you would not be familiar with any of these transactions with Ancorp?

A You are not --

Q Particularly since they violated the law?

A You are talking about the firm. What they know I don't know. I can't tell you. What I am telling

is my personal knowledge. I know of nothing of that matter.

Q Who in your firm would know?

MR. HUGHES: Do you know?

A No, I don't know who handled that matter.

Q Can you find out for us, and inform us as to who handled that matter?

A Well, I can make inquiry, but I don't propose to do so.

MR. HUGHES: I will stipulate -- I will stipulate, Mr. Farrell, that I probably have as much knowledge as anyone else in the firm with regard to that particular matter, although the News was not a party to the Government proceeding. The involvement of the News was that Mr. Underwood and Mr. Carey were subpoenaed to testify and did testify at that time.

Q Would it be fair to assume, Mr. Rodgers, and --

A And additionally, I was present when they testified.

MR. FARRELL: That when they were notified to testify in that matter that someone in the

firm would familiarize himself with that matter

A and consult with Mr. Underwood and Mr. Carey?

MR. HUGHES: Yes. The fact is that I accompanied them to the Federal Court and was present when they testified.

MR. FARRELL: Can you fix that date

A when you accompanied them?

MR. HUGHES: I couldn't give it to you offhand.

Q MR. FARRELL: Approximately? Was it '62?

MR. HUGHES: Oh, no.

MR. FARRELL: 1963?

MR. HUGHES: No.

MR. FARRELL: 1970?

MR. HUGHES: No. It was 1973.

I think Mr. Canoni has advised you, I

A believe, in this case that the action is on

Q file in the court, and it is a public record

A and you have access to it.

Q We never bothered to obtain a copy of the

A transcript because we didn't have that much interest in it.

BY MR. FARRELL:

Q Mr. Rodgers, as general counsel for the

Daily News --

A Will you stop that particular description of me personally. This firm is a general counsel of the Daily News.

Q When I say that the record will show that when I refer to you I am referring to the firm.

A You address questions to me about my knowledge and I will answer to them. This is a pretty substantial firm.

Q I agree with you. It is a very fine firm, and your reputation is excellent.

During the course of the New York News paying Ancorp the sum of $25,000, from the time these payments were made about 1962, did anyone from the New York News consult with you or your firm towards making these payments?

A No one consulted with me.

Q Anyone consult with your firm?

A I don't know.

Q Would you know who would know?

A No, I don't.

Q The reason that I am asking you these questions, Mr. Rodgers, is that I am sure you will agree that the payments made under the conditions which

they were made --

MR. HUGHES: I object to any statements by --

MR. FARRELL: Strike that out.

MR. HUGHES: -- by counsel.

MR. FARRELL: Strike that out.

BY MR. FARRELL:

Q Mr. Rodgers, did anyone, to your knowledge, ever advise the New York News not to make these payments of $25,000 to Ancorp at any time?

MR. HUGHES: I am going to object to the form of the question.

You are presupposing as fact things that have not been established as fact on this record in this case. I think you have already indicated that your knowledge of these things is rather indirect and peripheral.

I don't think it is appropriate for you to state facts that may or may not be facts.

MR. FARRELL: The Wall Street Journal reports a record from the court.

MR. HUGHES: Well, I think that if you were referring to actual court records we certainly don't accept hearsay statements

published in newspapers where it sometimes turns out that even newspapers are inaccurate.

MR. FARRELL: That is often true, coming from a firm that represents newspapers. However, I am sure there is no doubt about the accuracy of the fact that the News paid $25,000 to Ancorp for a period of seven years?

Mr. Rodgers, I have a copy of a letter which you mailed to Mirror Publications, Inc. on August the 31st, 1965.

MR. HUGHES: Are you going to mark that for identification?

MR. FARRELL: Yes, I will mark it for identification.

(Two-page letter on the letterhead of Townley, Updike, Carter & Rodgers, dated August 31, 1965, above referred to, was marked as Plaintiff's Exhibit 1 for Identification, this date.)

BY MR. FARRELL:

Q Does that letter or the copy refresh your recollection of having written such a letter?

A Yes.

Q In October of 1963 the New York News

acquired all rights and use of such names of the New York Mirror; is that correct?

A I believe that is correct.

Q Was that acquisition done with the assistance of this law firm, Townley, Updike, Carter & Rodgers?

A Yes.

Q Can you tell me who was present of your law firm that handled that transaction?

MR. HUGHES: I am going to object to this. I think that the, that this subject is not relevant to this proceeding. It is too remote in point of time, and I think you are beginning to get into questions that are not only irrelevant to this cause of action, but may involve the attorney-client privilege.

So I think I will note my objection.

MR. FARRELL: I am going to --

MR. HUGHES: At this point.

MR. FARRELL: I am going to request that we get a ruling at this point from Judge --

MR. HUGHES: Perhaps you --

BY MR. FARRELL:

Q Mr. Rodgers, are you familiar or have you

direct subject matter of the action and provides the base upon which the anti-trust evidence may be introduced.

MR. HUGHES: I am not going to engage in debate and colloquy on the record at this time. I don't think it is indicated --

MR. KLEIN: I say that, in order to avoid having to go to court. That is all.

MR. HUGHES: I just point out that the complaint here alleges that commencing in or about January of 1971 there was some sort of an agreement or understanding or conspiracy between the defendants.

I say that the inquiry that Mr. Farrell began to pursue is completely unrelated to that. Also, it seemed that he was getting into privileged and confidential matters between attorney and client, and also your statements with regard to the knowledge of this witness I think are not supported by the record and are inaccurate.

MR. FARRELL: These statements made by Mr. Klein using the word predecessor were not correct. The prior newspaper of a similar

name called the Daily Mirror or New York Mirror has no connection at any time with the plaintiff in this case.

MR. KLEIN: I am merely trying to avoid the necessity of going to court to get a ruling.

Q We tried in accommodation of it, of your client here to have the meetings in the building so that we could, as far as possible, economize and get some kind of mutual courtesy in the situation.

It seems to me clear that while the agreement was entered into in 1971, that an agreement itself was rooted in a history --

MR. HUGHES: The alleged agreement.

MR. KLEIN: I am talking about an agreement that you spoke about --

MR. HUGHES: The agreement alleged in the complaint --

MR. FARRELL: May I interrupt?

Mr. Hughes says he doesn't want to enter into any colloquy for a determination.

I think the only way that we are going to get a ruling on this is to take it up with

Judge Carter.

MR. HUGHES: I suggest that you put your questions and if I think they are objectionable I will object, and if I think they are not, I will allow the witness to answer.

BY MR. FARRELL:

Q Mr. Rodgers, was that takeover or purchase of the Daily Mirror by the New York Daily News done in contractual form in a bill of sale?

MR. HUGHES: I object to the form of the question. It is presupposing facts that have not been established: it is phrased conjecturally, and I think it is an improper question and could not evoke a proper answer.

MR. FARRELL: I don't think I am going to engage in the luxury of having you object to every question I am going to ask. So I think I will ask one or two more and unless we get some answers from Mr. Rodgers we are going to take this down to the court and get a ruling on it.

Q MR. HUGHES: All I am seeking to do is try to get clear questions that are proper in form.

MR. FARRELL: My questions are very clear. You may not think they are proper.

BY MR. FARRELL:

Q Mr. Rodgers, how much money was paid by the Daily News for the Daily Mirror?

A I don't know.

Q Would you tell us who would know?

A I don't know who knows.

Q Isn't anybody in your firm present that handled that transaction?

A I don't know that.

Q Can we then postpone this examination until such time as you give us the information as to who handled that transaction?

I want to question him, not you.

A Okay. I have said to you, sir, that I am telling you what I know, and I don't know what you are asking.

Q All I want to know is who handled that transaction.

A I don't know.

Q Can you find out for us and inform us?

I haven't had any answer to that question yet.

MR. FARRELL: Do you want to read that question back for Mr. Rodgers?

(The reporter read the question.)

MR. HUGHES: The answer to that, we will stipulate that, yes, if we can find out whether or not we think the subject matter is irrelevant and improper and will lead into confidential matters, we will object to questions dealing with those 1963 transactions, or the 1963 transaction.

Q In my notice to Mr. Canoni, at which time we established December 21st as the date for you to be examined, Mr. Rodgers, that notice requested that all documents, contracts, concerning the purchase of the New York Mirror by the New York News, Inc., be produced.

Do you have those documents with you?

MR. HUGHES: We object to the production of those documents.

MR. FARRELL: We will get a ruling on that one, too.

Q I have a letter here dated March 16, 1971, Mr. Rodgers. Is Mr. Edward M. Maher, M-a-h-e-r, a member of your firm?

its interests as you understood them?

A I wouldn't say it that way.

Q Would you kindly tell us how you would say that or give us the basis for your authority for this letter?

A I was given the factual background from this letter by my partner E. M. Maher, and this letter was prepared and sent out.

Q Are we now talking about the letter of August 31, 1965?

A Precisely.

Q And the Mr. Maher to whom you refer --

A The same man.

Q The author of this letter of March 16, 1971?

A The same man.

Q Do you remember the circumstances under which the Hearst Corporation suspended publication of the Daily Mirror?

A I don't remember any particular circumstances about the suspension. I know that it occurred.

Q I am following down the letter.

A I know. It was general knowledge. I certainly knew that they had suspended publication.

ORAL TESTIMONY (EXAMINATION BEFORE TRIAL) *

Oct.16th,1973

of

HENRY KANE

An employee of the defendant
New York News Inc.,

* Hand written inserts to be disregarded.

A Estimated.

Q Those forms filled out by sales reps are put into a drawer?

A Filed.

Q Do you have copies of those for the years '69, '70 and '71?

A I would say not.

Q Would you have copies of those for '71?

A I would say no.

Q Do you destroy them?

A I would say, yes.

Q You would say that there were roughly 80 to 100 a week, and 52 weeks, so that at the end of any given year, '69, '70 or '71, there would have been anywhere from 400 to 500 such forms?

A Estimated.

Q Would those forms have come to the attention of Mr. Underwood, filled out by your men?

A I don't know.

Q In the normal course of business, if there was a problem that generated from one of those forms, would that matter be taken up with Mr. Underwood? He was your boss; wasn't he?

A No. My direct boss is Carleton Rosenburgh.

convey messages to these News dealers, as to what they are told to say?

Do your representatives carry orders to the various News dealers that they meet with regard to the sale of your newspapers or any other matter relating to either the News or competitors?

A I don't understand what you mean by "orders."

Q To the best of your knowledge, do your 16 men in your employ ask questions from the various News dealers they go to?

A Pertaining to the sale of the News? Yes.

Q Pertaining to the sale of other newspapers.

A New York Times.

Q And other newspapers?

A On occasion the New York Post, when there is a big story break.

Q When did you first become familiar with the Daily Mirror as published by the plaintiff in this action?

A I guess the first day it was published.

Q Did you have a meeting concerning the Daily Mirror?

A No.

Q When your men came back from their tr

was the Daily Mirror discussed in your office?

A Yes.

Q Were the questions asked of these representatives to find out the various draws and the sales at various newsstands?

A Yes.

Q When they brought back these reports, were there discussions at your Monday meetings or any other meetings concerning the Daily Mirror?

A Yes. Occasionally.

Q When did you first become employed by the New York News?

A In 1957.

Q In what capacity did you start?

A Night inspector. A suburban traveling representative. Assistant country -- I am sorry. Before that, area sales manager for the Bronx and Manhattan and Mount Vernon.

Then assistant country sales manager.

Then country sales manager.

Then suburban sales manager to my present position.

Q Were you ever a rep on the street? One of those 16 men? Did you have a job like that?

Q Yes. An estimate.

A Approximately 25 to 30.

Q Were those the same 20 to 30 that you covered in the three-year period, or did that circulate in different territories?

A I had different territories.

Q Bronx? Manhattan?

A Yes. I had all the areas.

Q What three-year period were you night inspector or night fieldman?

A I believe from '57 to '60.

Q In the course of that period, did your duties take you to any Union News outlets?

A If the Port Authority was open, or Grand Central, yes.

Q Do your 16 men, in their daily work, cover the Union News outlets?

A Yes.

Q Did they issue reports on the draws and sales and regulations for the Union News outlets?

A That would be included with other dealers when they do come into the office, to make a regulation on a weekly basis.

Q How many stands would the average man visit

I am asking. Let me ask the question. If you don't like it, you can object to it.

MR. GERAGHTY: Fine.

BY MR. FARRELL:

Q Did there come a time in your employment where you make memorandums and submit them to other authorties in the Daily News?

A Yes.

Q How do you make those memorandums?

A On that form.

Q How often, if you can recall, do you make such memorandum? Every day?

A No.

Q Whenever the occasion arises?

A Yes.

Q One of those occasions was when the Daily Mirror started publication?

MR. GERAGHTY: Objection to the form of the question. You can answer it.

Q The question is, on one of those occasions, if you used this form, was when the Daily Mirror started publication?

A Yes.

Q Did you continue to make such memorandum

periodically after the Daily Mirror started publication?

A That is the only one I can remember.

MR. GERAGHTY: With respect to the Daily Mirror?

THE WITNESS: Yes.

Q The information on this form, marked Exhibit 2, where did you get the information?

A For the wholesalers, in most cases --

Q I am asking you, where did you get this information?

A I am trying to answer that.

MR. GERAGHTY: There is more than one category of information.

Would you like to see the documents in order to answer?

THE WITNESS: May I?

MR. FARRELL: (Handing).

Q What is your answer?

A In the case of Gaynor News Company, I either made a phone call to their circulation director, or my assistant. To the Jersey wholesalers, I made a phone call to the Jersey distributors or my assistant, or in turn, the sales representatives covering that

area, to ask them the draw of the Mirror.

In the case of the distribution of the Mirror in the five boroughs, I don't know who made the call, but I think the call was made to the Metropolitan News distributor to get the information from them.

Q Who did you talk to at Gaynor News?

A To the best of my knowledge, as I mentioned before, the circulation director, Frank Hantke.

Q Do you know when that was made?

A Do you want a guess?

MR. GERAGHTY: No guesses.

Q Who did you make the call to the Jersey wholesaler?

A To the best of my knowledge, I would say --

Q Sam?

A Maybe Sam Klinghoffer. Maybe Mel Klinghoffer.

Q Who did you make the call to at Metropolitan News?

A I didn't make the call.

Q Who did?

A I think probably the city sales manager.

Q Who would that be?

A Don Derle. Or his assistant.

Q Do you do business with the Metropolitan

News, to the best of your knowledge?

A No, we don't.

Q No business of any kind?

A Not to my knowledge.

Q In the calls that you made to allegedly Frank Hantke and to Sam Klinghoffer, what did you say when you called them?

MR. GERAGHTY: Take them separately.

Q Take them separately.

A Again, to the best of my knowledge and recollection --

MR. GERAGHTY: Don't guess.

A (Continuing) I asked --

Q This was sometime in the early part of '71. Your memo says January 12th.

A I think so.

Q Prior to that period, because the report is dated 1/12. This must have been from information prior to 1/12 and reduced in writing by you.

A I don't recall when the Mirror started, what date, to be honest with you.

Q What was your conversation with Frank Hantke pursuant to that call?

A To the best of my knowledge or recollection,

I asked him how many copies of the Mirror are they handling. I believe he gave me a figure. I don't recall the figure.

I would also like to say that we also get information on other papers.

Q I didn't ask you that. I just asked you what your conversation with Frank Hantke is.

A I think I stated it.

Q Would you say that was generally the same conversation you had with the Jersey wholesaler, Sam Klinghoffer?

A If I read that right. I don't think at that particular time the wholesalers in Jersey were handling the Mirror.

Q You told me that you spoke to Sam Klinghoffer.

A Yes.

Q I am asking you what your conversation would be.

A "How many Mirrors are you handling for distribution?"

Q You also said, to the best of your knowledge, they were not carrying the Mirror.

A So I was told, and I think it's stated there.

Q At that time, you say that the printed

copies was 105,000?

Estimated.

Q Gathered from information that you or your men obtained by telephone calls or visits to wholesalers?

A Correct.

Q Or from visits to newsstands?

A No.

Q Who provided you with the information, if anyone did, as to where the Mirror was being printed? Do you know?

A I don't recall.

Q Were you provided with information as to the press time of the Mirror?

A I think we were.

Q Were you provided with the information as to who was distributing the Mirror?

A Could I have clarification when you say "distribute"? I don't understand the question.

Q Who was handling distribution of the Mirror?

A I guess Gaynor News and Metropolitan News Company.

Q You have that information?

A I so stated.

Q When you recapitulated this report,

clear now, so I don't have to go week by week into the situation? Am I right on that?

A Can I make a statement?

Q Yes. Any statement you please.

MR. GERAGHTY: Off the record.

(Discussion off the record.)

Q The answer is no?

MR. GERAGHTY: The answer is on the record.

Q Did you get reports in the field, from the field, of the [illegible] sales reps and eight suburban sales reps, from week to week?

A Yes.

Q Were those reports in writing?

A For the most part, yes.

Q Do you have those reports in your files now for the years '70, '71 and '72?

A No, we do not.

Q What happened to them, as far as you know?

A For the matter of space and room, they were discarded.

Q I didn't ask you why. The answer is, they were discarded? Is that the answer?

A Yes.

Q Do you know who discarded them?

this report, called Plaintiff's Exhibit 2 for identification, because the witness said there was only one.

MR. GERAGHTY: I don't think you were forced to.

MR. KLEIN: I am giving you my mental state.

MR. GERAGHTY: Off the record.

(Discussion off the record.)

BY MR. KLEIN:

Q Mr. Kane, this report marked Plaintiff's Exhibit 2 for identification, you testified in part came from your staffmen. In part?

A In part.

Q This report is dated January 1?, 1971. Beginning with the week following that, can you tell us what the staffmen reported to you from the field with respect to the Daily Mirror?

A They said it was a fair sale.

Q A what kind of sale?

A A fair sale. The Mirror is experiencing a fair sale.

Q What does "fair sale" mean, in your jargon?

A It doesn't mean good. It doesn't mean bad

A 202 Affidavit of Personal Service of Papers — LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OS APPEALS
FOR THE SECOND CIRCUIT

DILY MIRROR, INC.
Plaintiff- Appellant

- against -

NEW YORK NEWS, INC. etal
Defendants- Appellees

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF **NEW YORK** *ss.:*

I, Victor Ortega, *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 1027 Avenue St. John, Bronx, New York
That on the 10th *day of* November 1975 *at* **see attached**

deponent served the annexed Joint appendix *upon* **see attached**

the *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* Attorney(s) *herein.*

Sworn to before me, this 10th *day of* November 1975

Victor Ortega

VICTOR ORTEGA

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418[illegible]
Qualified in New York [illegible]
Commission Expires March [illegible]77

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